

A  
Common Law Treatise  
O F  
**USURY,**  
A N D

Usurious CONTRACTS:

Wherein is set forth,

The Nature of Usury, and what Contracts are said Usurious in our LAW.

What Contracts are Usurious or not, in respect of Contingency, or Probability, or in respect of the Times of Payment; Or in respect of Subsequent Agreements, or Receipts after the first Contract made.

*In what Cases the Contract shall be taken as a Penalty, or in Nature of a Nomine Pœnæ, and not as Usurious.*

Of Goods, Chattels, &c. and not barely Loan of Money.

Wherein is also added.

Explication of the several Statutes against Usury, with many Cases of BROKERS.

Informations on the Statutes, either upon Loanes or Receipts, as the Case is, with safe Directions to draw them; In what Court, and within what Time to be brought. And Presidents of Forfeitures and Penalties.

Of Pleading the Statute of USURY, to avoid Bonds, &c. Pleadings as to Loan or Receipts,

What Averment may be made to draw the Contract out of the Statute of USURY.

Evidence, Tryal, Verdict in Informations, &c.

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# The Preface.

**I**F Usury be Lawful or not, and how it ought to be circumstantiated to make it so, hath been *vexata Quæstio* amongst the Ancient Divines, but never so warmly agitated as in this last *Century*; Some make a doubt whether it be not *malum in se*; but that I conceive is soon answered in the Negative; for then the *Almighty God* would never have permitted the *Jews* to take it of Strangers, for he gives no allowance for Sin; And for that Reason, some think

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## The Preface.

the *Old Testament* Commands against Usury are only Political, and as a municipal Law, extending only to the Jewish Dispensation, and binds us no more than the Year of *Jubilee*. Be that as it will, it must be confess'd, that it was in Ancient Times *nigro carbone notata*, the Councils and Fathers generally condemned it as Unlawful, especially in the Clergy, as the first *Nicine* Council, and that of *Arles* and *Carthage*, and the *Lateran Council*; and the Fathers seem'd to be of that Opinion, as *Basil*, *Gregory Nazianzen*, *Gregory Nissen*, *Tertullian*, *Jerom*, and *St. Austin*. Yet they were not of Opinion that it was *malum in se*, but look'd upon it as Lawful or connivable in some Cases. The *Civilians* likewise had no good Opinion of it: And *Hottomannus* gives two or three cunning Arguments against it. 1. It is of the very Essence of Lending,

## *The Preface.*

v

Lending, that it be free and gratuitous; Then farewell all Cases of hiring, for that is a lending too, but upon prospect of Profit, as if I lend my Horse a Journey for so much a Day. 2. That one is not to receive certain Profit from an uncertain Adventure; Then farewell Merchandising, Banks, Tickets, Insurances, &c. and consequently Ways and Means to raise a Fund for the carrying on a vigorous War, &c. 3. That things that are consumed in their using are not capable of *Usus-Fructus*, which is the Use or Profit of what is anothers, the Propriety or Substance of the thing being in the Owner; Then farewell most sorts of conditional Agreements. I confess I have an Honour and Veneration for the Councils and Fathers, and yet we well know how that many strange Articles of Faith, and bigotted Opinions have  
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*The Preface.*

been entertain'd, and have received their unhappy improvements from the Credit of their unwary Slips and Misapprehensions. As to the matter in hand, they had not occasion for such Reasonings about it as in late Times we have had: People lived then like Anchorites, and took up with general Notions delivered down from one to another without any close Examination. The course of Trade in the World was then but low and mean in comparison to what it is now; and where Money and Trade is plentiful, there of Necessity it must be Bartering and Exchanging, Buying, Selling, Borrowing and Lending, Forbearance and Usance, without any thoughts of Usury in the *Mosaick* Sense. In *England*, in the time of Queen *Elizabeth*, when we had open Trade at Sea, and the Merchants freighted our Native Commodities, and had Returns

## *The Preface.*

vii

Retorns in Bullion and other rich Foreign Goods, they could not well carry on their Trade without borrowing Money to freight out, till their Retorns came back, or to pay Customs (for then Customs began to run high) and the Lenders allowed Profit at 10 *l. per Cent.* which afterwards was reduced to 8 *l. per Cent.* and now to 6 *l.* Then some of our Divines began bitterly to inveigh against Usury, as Bishop *Andrews*, Bishop *Jewell*, &c. and Bishop *Jewell* in his Comment on the *Theſſalonians*, gives the smartest Charge that I have found against it. *Philosophers*, saith he, *Greeks*, *Latins*, *Lawyers*, *Divines*, *Catholicks*, *Hereticks*, and all Tongues and Nations have thought an Usurer as dangerous as a Thief; and our Fore-Fathers (persues he) so much abhorred the Trade, that they Excommunicated an Usurer; they  
suffered

*The Preface.*

suffered him not to be a Witness in matters of Law, they suffered him not to make a Testament of his Goods, or to be buried amongst *Christians*. And I wonder how Bishop *Sanderson* came to embrace such Sentiments. But a Judicious, and as great a Casuistical Divine as our Age hath produced, I mean Mr. *Calvin*, has refined very well on this Subject, and in his *Republica bene constituta*, he allows it with these Restrictions: 1. That it be not practised on thy needy and indigent Neighbour. 2. That a Man be not so addicted to Gain, but he be still ready to furnish his poor Neighbour freely. 3. That he do not make a Trade of Usury. 4. That the Rule of our *Saviour* be our *Touch-stone* to deal no otherwise than we would be dealt with. 5. That the Borrower's Gain be so much more, at least, as the Usurer's Interest



Interest comes to ; (but this cannot be expected as a standing Rule, especially on contingent Bargains, &c. 6. That it never exceed the stint set by the Law. After all ; I conceive that the letting out of Money (as it is now practised in our Nation) is not only Lawful but highly convenient, if not almost Necessary in many Cases, as on Mortgages for securing Orphans Portions, and Interest towards their Maintenance in the mean time till the payment thereof, or Securities of Annuities, &c. Such Trusts and Contracts being guided by the Interest allowed by Law, and no Man can make a safe and prudent Purchase or Bargain, without having that in his Eye. Besides, were it not for this, how could a Man raise Money upon an urgent and unexpected Occasion, or how can he obtain time to make the best Sale of his Lands or Goods,  
or

## *The Preface.*

or how could Men save themselves from a sudden and surprizing Toss into a nasty and chargeable Jayle; and therefore my Lord Chancellor *Bacon* (that Gyant of Parts) is of Opinion, that the expedient of borrowing Money upon Interest, is a great Relief, and (saith he) to talk positively against Usury, is Ridiculous. As for the Saying of Judge *Herle*, that its Monstrous for Money to beget Money, its a trifling Reason; and tho' Mettal on Mettal is false Heraldry, yet I am sure in our Case its good Husbandry. I know of nothing else that begets Money more than Money, and he that will fish for Money, must bate with a Silver Hook, or else he may bob long enough till he is ready to Starve. Its no Question but I may make the best Use of my Money for my Advantage, if I do it Legally and Honestly: Yet saith one, you

## *The Preface.*

xi

you may make the best of it, but not the most of it. A very pretty Distinction: Now if I purchase a Farm with my Money, or let it out upon good Security at Interest; Its all one in effect; only, one is an absolute Bargain, and the other is Conditional; If I let my Money out at Interest, and say to the Mortgagee, Obligee, &c. you shall pay me so much a Year Rent for my Money; And I let a Farm to a Tenant, and agree with the Lessee to pay me so much Interest or Profit yearly during the Term agreed upon for my Lands, pray where is the difference? For the words in a Lease is Yielding as well as Paying, and *reddend' & solvend'* are often used promiscuously in our Law. I am not pleading for oppressive and illegal Usury against either Poor or Rich (for I may be an unjust and oppressive Usurer against a Rich Man, if I take Advantage



vantage of his present Necessities). But I think Usury, as to my poor Neighbour, especially when I know his Straits and indigency, is utterly Unlawful, not only by the Law of *Moses*, but by the Law of Charity; and so is the express Command, *Exod. 22. If thou lend thy Money to any of my People that is poor by thee, thou shalt not be to him as an usurer, neither shalt thou lay upon him Usury.* And in this Sense are all the *Old Testament* Expressions relating to Usury to be understood. As to the *Evangelical Law*, that of our Saviour is much insisted upon--- *lend, hoping for nothing again*, and yet this is not to be understood absolutely, for then it would be giving and not lending, but expecting nothing again, that is, as a Result or Overplus for thy Kindness: And so is our Saviour to be understood, in several of his Precepts and Flights,

Flights, according to the nature and Sense of the Case. — *If he take away thy Cloak, give him thy Coat also.* This is to be interpreted according to a reasonable intent (*videlicet*) contend not too much about small Matters. Our Saviour never intended to give us particular Rules about purchasing of *Estates, Annuities, Mortgages or Securities*; but leaves that to a Regulation and Establishment settled by the Government and *Laws* of every *Country*. Nay in some Cases a Man may receive more Profit for his Money than the legal stint, and not be unjust, as in cases of Contingencies. Ay, and in some cases not contingent: A *Merchant* knowing I have 500 *l.* by me, and having agreed for 2 or 3000 *l.* worth of Foreign Goods and Commodities (a great Pennyworth) comes to me and tells me, that he hath made a Purchase in-  
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choate for 3000 *l.* but he wants 500 *l.* to perfect and make it up, and is in great perplexity, for fear he should be deprived of the Bargain for want of the Money; and faith of his own voluntary accord, in six Months time I will give you six hundred Pounds: I lend him the Money, and knowing him to be a great Gainer by his Bargain, come at the time to him, and demand my 600 *l.* He answers me, Sir, Have a care of your Soul, for Ufury is a grievous Sin, here's your 500 *l.* I confess I should not be well pleased with this flie Rascal for all his *Canting Divinity*: This is a Trading Contract, and in this I am *quasi* a Partner with him for so much: In such Matters a prudent honest Man be ruled by the Circumstances of the *Case*.

But



But to leave these Speculations to Casuistical Divines, whose Office it is to direct in such and the like cases of Ambiguity; As to the Subject of this Treatise, tho' little in Bulk, yet considerable in Consequence; My Design is to instruct and inform *Lawyers, Conveyancers*, and other Gentlemen how they may secure their own or other Persons Monies (with which they are intrusted) with safety, and not be obnoxious to the severe Penalties of the several Statutes against Usury, which are indeed very Penal, and without being liable to the Vexations of greedy *Informers*. And herein I have treated of the Nature of *Usury*, and how the same is look'd upon in the Eye of the *Law*, and what shall be said an Usurious Contract or not, in respect of Uncertainties, Contingencies and Hazards in several

A Cases

Cases adjudged with nice Diversities. What is Bottomree and not Usury: What is Annuity and not Usury: What shall be said to be an Usurious Contract in respect of times of Payment; and what shall be said Usurious Contracts in respect of bargaining for Goods and Chattels, and of Usurious Mortgages and Agreements. I have made Explication of the Statutes against Usury by several adjudged and reported Cases. I have treated of Informations upon the Statute, and how, and in what Courts to be brought, and within what Time; with a President of an Information, and of Debt brought upon the Statute 12 *Car.* 2. and a President of a Declaration: And of a Plea in Bar to an Obligation on the said Statute, and of Indictments on the said Statute, with a President thereof. To what Securities

## *The Preface.*

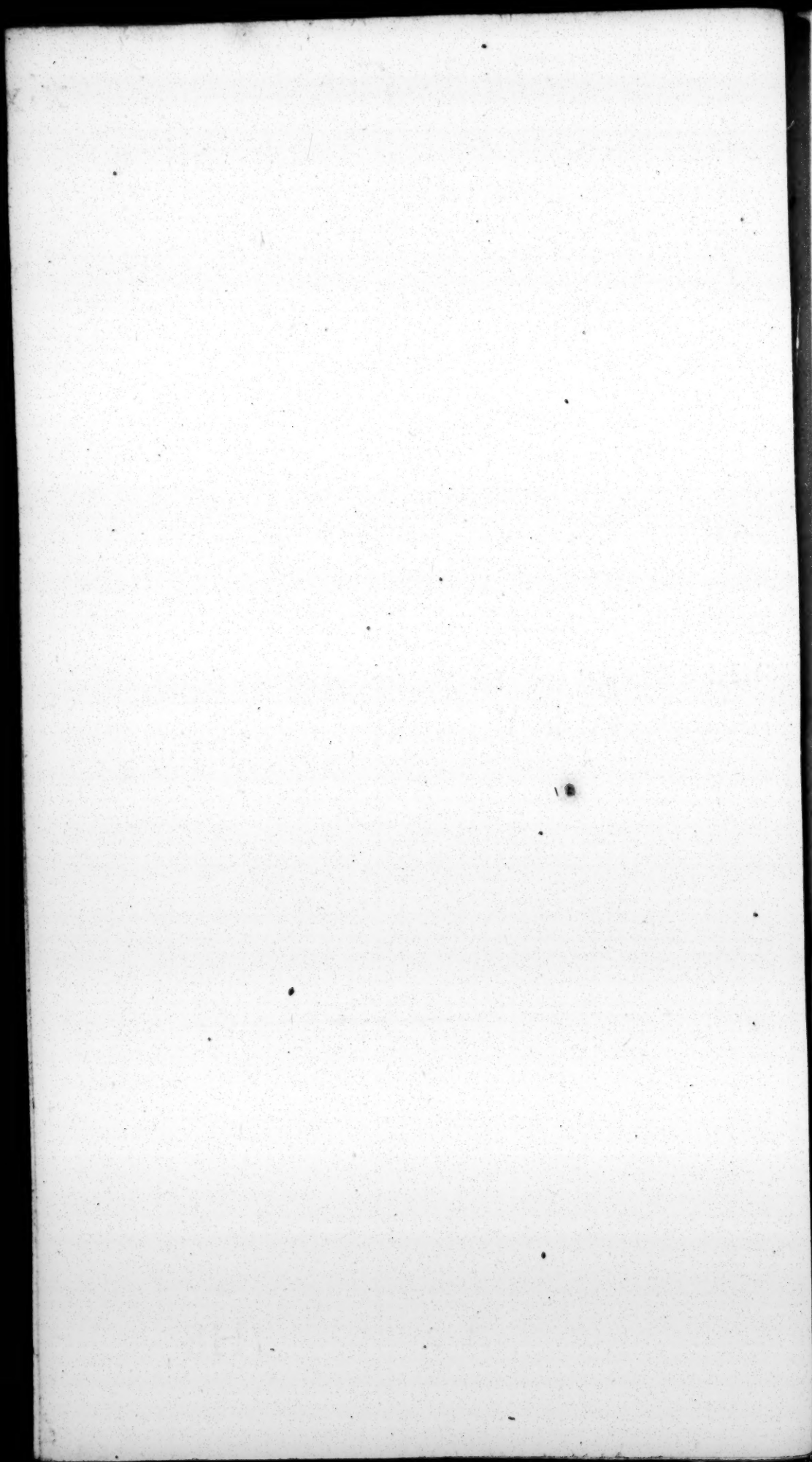
xix

rities the Statute may be pleaded or not: I have put all the Statutes concerning Usury at the end of the Treatise.

I do not doubt but the Reader will be well satisfied upon perusal: The conveniency of such Treatises being, that he may see all the Cases extant on this entire Subject, and not be fatigued with the trouble and charge of turning over almost insupportable Volumes.

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# THE CONTENTS.

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## Section I.

**T**HE Nature of Usury, and how it stands in the Eye of the Law: No Action of Debt lies for Interest-Money, but it may be recovered in Assumpsit or Covenant, and how. Payment of an Usurious Bond, a Devastavit. Usury odious and hateful in Law, instanced in several old Records, and observable by the Acts of Parliament themselves.

## Section II.

p. 5.

*What shall be said an Usurious Contract or not, in respect of hazard and contingency of a Life or Lives. of Wagers: What corrupt Agreement is Usury, tho' upon a Contingency: What shall be said Bottomree, and not Usury; in respect of probability: Where payment depends on many things, of which one in probability may happen: Diversity between a Bargain and a Loan: Diversity where the Principal is hazarded or not hazarded: Where it shall be construed Annuity and not Usury: No Agreement to have the Principal Money: Where Casualty goes to the Interest only. Agreement so as to pay Principal and Interest at Election or not: Where a Bargain may be Casual and yet Usurious: What shall be said an Usurious Contract in respect*



*spec̃ of the times of Payment: Where it is a plain Bargain and Conditional Purchase of a Rent and not Usury: Where there may be power of Redemption, and yet a corrupt Agreement: If Money taken instantly upon the Lending for Forbearance is Usury. Security only, doth not make an Usurious Contract.*

## Section III.

*p. 17.*

*What shall be said an Usurious Contract, in respect of the wording or mistaking of the Scrivener: If the Mortgagee be entitled to the Interest and the Profits, if Usury or not: Of the Mistake of a Scrivener where there is no corrupt Agreement of Subsequent Usurious Receipt: Continuance or Agreement after the first Contract, where the last Contract may be void against the Statute, but not the first: A new Bond given in part*

*of the first Sum corruptly Lent: Tho' the time of Forbearance be past, yet punishable against the Brokers, if they detain the Pawn: Where the Assurance shall not be void, but the Party shall forfeit the treble value: Where there is no Contract before, or during the continuance of the Money, payment after may be no Usury, unless in the Case of Brokers, if a second Defeasance be for more than the Statute allows.*

## Section IV.

p. 23.

*In what Cases the Contract shall be as a Penalty, and in the nature of a nomine poenæ, and not Usurious. Promise to become bound to pay 10 l. with the Interest of it at the end of the Year, good. Usury as to other things, as Goods, Chattels, Leases, and not barely for Loan of Money:*  
*Adtunc*

*Adtunc valebat to what it refers. An House, &c. must be alledged to be of such a value and no more at the time of the Bargain. To accept of a Lease for 300 l. at 35 l. per Annum, Condition to be void if he pay 300 l. at the end of four Years, if it be Usury, and why: Of Goods being over-valued or under-valued: The President of an Original in Aud' Quer' upon a Statute-Staple for Goods avoided by Usury.*

## Section V.

*p. 30.*

*Of Conveyances, Fines, &c. avoided by Usury: Conditional Purchase of a Rent, and not Usury: Though it be not express'd, that the Mortgager shall take the Profits, yet it may be averred: Power of Redemption inserted only to evade the Statute: Where Agreement for an Annuity shall*  
*be*



*be taken as Usurious: Where tho' the Bargain be very unreasonable, yet it shall not be construed as Usurious: Where a Mortgage shall be Usurious, or not,*

## Section VI.

*p. 39.*

*Explication of the Statutes of Usury: Jury find an Usurious Receipt, not an Usurious Loan: If the Statute 37 H. 8. gives an Information upon a Receipt where there is no Loan: If the Statute 13 Eliz. 9. makes the Contract void upon an Usurious Loan, tho' there be no Receipt. One shall not be punished for an Usurious Contract if he takes but the Use allowed: Of a corrupt Agreement to take Use for the time past: Information grounded on the Receipt, not on the Contract: Two distinct Clauses very observable in the Statute 12 Car.*

ar. 2. concerning corrupt Agree-  
ent and corrupt Receipt, and the  
distinct Penalties: If Usurious Con-  
act after a Bond shall avoid the  
bond, or how otherwise punishable:  
ction grounded on the Loan and on  
the Receipt: Statutes of Usury  
disrecited; the word (made) omitted  
made the Plea ill: Where by particu-  
lar Conclusion the Plea may be ill,  
which on contra formam Statuti ge-  
neral might be good.

## Section VII.

p. 47.

Where the Statute of Usury shall  
be taken strictly and in terminis in  
Information: Information in the  
Exchequer for Usury in London:  
Diversity between Information and  
Special Verdict; as to certainty, di-  
versity between an Information and  
leading to avoid a Bond. If the  
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Attorney General *enters a non vult*  
*prosequi, it be a Bar to the Infor-*  
*mer: Information must shew whose*  
*Money it is: No Corruption al-*  
*ledged in the Information (for*  
*Forbearance) in the Statute, how far*  
*it extends: If Information be upon*  
*corrupt Receipt, how to be laid. In-*  
*formation to set forth the Quantity*  
*of the Interest received. Informa-*  
*tion within what time to be brought*  
*Non-suit in Information on Sta-*  
*tute of Usury, not recorded in Court*  
*and why. Information where to be*  
*laid of Action of Debt on the Statute*  
*of Usury: Lies not in Inferiour*  
*Courts: Declaration, Judgment.*



## Section VIII. *p. 59.*

*Pleadings. To what Securities the Statute may be pleaded; not to avoid Judgment. Action tam quam, not within the Statute 27 Eliz. c. 4. Audita Querela on Execution, if a Man be condemned by nihil dicit, he shall not have Audita Querela, and why: How if upon default of pleading as to the Agreement corrupte great: Where the Agreement ought to be traversed: Where a Bar shall be made good by the Replication: Where a verbal Agreement may be pleaded, and when, or not: If any corrupt Agreement be, it must be expressly pleaded. Judgment at Common Law upon corrupt taking: Allegation against the words of the Condition: Agreement traversed: Where one shall not take Advantage of his own mispleading: Pleading to avoid Bond or Deed.*

Section

## Section IX.

p. 75.

Where the Special Matter to be pleaded: If a Stranger may plead the Statute of Usury in avoidance of Conveyance: On a Counter-Bond to save harmless, if the Defendant may plead the Statute of Usury, & sic non damnificatus. Corruption between the Debtor and the Surety to which the Debtee is not Privy hurts not: The Party damnified by the Contract must be privy to it. Outlawry pleaded to an Aud' Quer' to avoid a Statute upon the Statute of Usury. If the King pardon the Usury, whether the Bond be void. General pardon pleaded: If it may be allowed in arrest of Judgment. A Man in pleading saith, secundum ratum of 10 l. per Cent. and saith not what it is: Pleading Usurious Receipt, Statute

*statute mispleaded: Pleading another Information depending. Anticipationem bille, how to be pleaded: If this Plea be a good Plea in law: Of Averment to avoid Bonds, Fines, and Usurious Contracts.*

## Section X.

*p. 100.*

*Evidence, where he who borrowed the Money may be a Witness. Certainty of the Bargain, where to be shewn in Evidence. Where the Informer is to shew the particulars on the Evidence. In what Case the Evidence doth not maintain the Information. Difference between a General and a Special Verdict. Issue. Trial. To be tried not where the Bond was made, but where the Usurious Contract is alledged to be. Agreements to be traversed because several. Contract alledged to be made with two,*



*two, and it was made only with one  
Verdict where imperfect. Jury find  
not corrupte agreeatum, yet good  
Of Tryal by proviso in Information  
on Statute of Usury. Where no Judge-  
ment could be had because he said  
not corruptive. If of several Summes  
Judgment shall be for that that  
good, and void as to the other which  
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THE

# Nature of Usury,

*And how defamed at Common-Law: And how it stands now in the Eye of the Law.*

**T**HAT Usury was in all Christian Ages reputed unlawful and an odious Vice, and ranked amongst the most Flagitious Crimes, our ancient Books, Statutes, and Records sufficiently Testifie.

In an ancient Book in the Exchequer, called *Magister Tilburienfis*, there is enumerated what things the Sheriff shall enquire after in his Tourn, *bona felonum as treasure trove, bona Usurariorum, Christiani Judaizantes*, and *Hill*. 16. Ed. 3. Rol. 28. John Heker was in the Counter for Usury, and removed by a *Certiorari* into the Queen's Bench, and committed.

In temp. Ed. 3. Usury was taken as unlawful; for there one demands Judgment if he shall be put to answer to the Suit of one that sins in Usury; and many other things may be cited to this Purpose.

## 2. The Nature of Usury, and

But tho' it was of such ill Reputation (that Herle said it was monstrous, that Money should beget Money). Yet the Law was fain to tolerate it, to avoid a greater Mischief; but afterward the Judaizing Christians grew so Extravagant in their Usury, that Acts of Parliament were made to prohibit the restraint of it: And yet those very Statutes have defamed Usury in down-right Expressions, tho' they have allowed it: By Stat. 37 H. 8. 9. it was stinted at 10*l.* per Cent. and when the Act of 13 El. that restrained to 8 per Cent. was about to pass the Bishops refused to assent to it, because there was no Clause in it that disgraced Usury as in the precedent Statutes; therefore, a Clause was added for their Satisfaction at the end of the Statute.

*Per Hale C. J.* Jewish Usury was prohibited at Common-Law, and no other; it was 40 *l.* per Cent and more; he calls it biting Usury: The Statutes call it horrible, devilish, and damnable Usury.

2 Ed. 1. Rot. Claus. mem. 2. Rex Major' Vic' London *Quia, &c. vobis mandam' qd. publice proclamar' faciat' in civitate pred' quod omnes mercatores Usurarii infra 20 dies a datu presentium & recedant a civitate pred' & regn' exeant super forisfactu' corpor' & bonorum quorumcunque.*

Administrator pleads a Judgment of 500*l.* for debt, and Interest for the same, *ultra quod, &c.* Its an ill Plea, for tho' a Bond to pay Interest



terest hath been held good, and so Covenant and Action on the Case, yet no Action of Debt lies for Interest without Deed, 24 Car. 2 *B. R. Seaman & Dee's Case*; and it cannot be reneyed for Debt in the Executors time, and by *Vaughn* in *Wilson* and *Doves Case* Assumpsit to pay 3*l.* for Interest Money lies not for at this day, 13 El. c. 8. tho' there be Laws in excuse for Penalties, yet none that do make the taking of Interest Lawful; but the other three Judges *contra*. If it be agreed by Indenture between A. and B. that certain Money shall remain in the hands of B. *solvend' proinde* to A. Interest according to the rate of 6 *l. per Cent*, Action of Covenant lies upon this Indenture for non-payment of the Interest Money, *Rol, abr. Crispe* and *Northey*.

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By *Hale C. Just.* 1 *Ventris* 198. No Action of Debt lies for the Interest of Money, tho' the Borrower promises to pay after the rate of 6 *l. per Cent* for it, but is to be recovered by Assumpsit in Damages. So if by Deed, the Plaintiff covenants or binds himself to pay the Principal and Interest, the Interest is not to be included with the Principal in an Action of Debt, but shall be turned into Damages, which the Jury is to measure what the Interest amounts to, which is allowed to be done.

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If an Executor pay an Usurious Bond, other Creditors may make a *Devastavit* of it, *Hob. p. 167.* If a Man be bound in an Obligation Usurious, the Bond is void between the Parties, yea and Strangers shall take the advantage of it; and therefore if such an Obligor makes his Executor and die, and the Executor pay the usurious Bond, other Creditors may shew it, and make a *Devastavit* of it, in *Winchcomb* and the Bishop of *Winchester's* Case.

*What shall be said an Usurious Contract or not.*

*But first observe these following Diversities,*

1. Diversity must be observ'd between an Usurious Contract, and Usurious Receipt.
2. Diversity between a Loan and a Bargain.
3. Diversity where the Principal is hazarded, or not.
4. Where the Bargainor hath liberty to pay or not to pay at Election.
5. Diversity between an Original Contract and a Subsequent Contract.
6. Diversity between a bare Penalty or *no mine pœnæ*, and Usurious Contract.
7. Diversity between an Original Agreement and Collateral Agreement.
8. Diversity between Information and Special Verdict, as to certainty: All explained, *infra.*

*What*

What shall be said an Usurious Contract or not, by reason of Uncertainty, Casualty, Contingency or Hazard.

*Clayton's Case*, 5 Rep. 70. is, One lends 30 l. upon Bond, until the second day of June next ensuing, to pay to him for the Principal and Loan of it 33 l. on the 2 of June, if the Son of the Obligee shall be then living, and if die before the said day, that then he shall pay to him but 27 l. which was 3 l. under the Principal; and this was resolved to be an Usurious Contract for the Reasons *Popham* put in *Burtons Case*, as upon this Case. If A. lend B. an 100 l. if he will give to him for the Loan of it 20 l. for a Year, if the Son of A. then should be living, this is Usury within the Statute, for if it should be out of the Statute for the uncertainty of a Life, the Statute should be of small effect, for by the same reason he may add more Lives. Condition was (for 100 l.) to pay 20 l. at half Years end, if I. S. be then living, and if not then but a less Sum than the Principal, it is Usurious: He averr'd the 20 l. amounted to above 10 l. per Cent, for by the same reason he may add 20 Lives. 2 *Anderson* 15. *More* 497. *Cr. El.* 642.

On the Contingency of or Life.

Debt on Bond conditioned to save indemnified from an Obligation, wherein the Plaintiff and Defendant were obliged to one W. and from all Suits and Actions concerning it.



## The Nature of Usury, and

Defendant pleads the Statute of Usury, and that it was *corrupt agreeatum* between them and W. that the Defendant for the Forbearance of 20*l.* for a Year should give to W. 10*l.* if A. his Son were then alive, and that the Bond was made for that Cause, and so void, which the Plaintiff might have pleaded against him by W. It was moved that this was not any Usury in regard the payment of the 10*l.* is appointed to be upon an uncertainty (*viz.*) the Life of A. But the Court held it Usury; for the corrupt agreement which is confessed by the Demurrer makes it so, and the intent makes it so or not so; for if there be a Wager between 2 to have 40*l.* for 20*l.* if one be alive at such a day, that is not any Usury, for the Bargain was *bona fide*, and not for Loan; but if the Intent hereby was to have a shift, otherwise. A. Lends 150*l.* to B. the 2 of *August* for 2 Years; at the same time *agreeatum fuit* between them that for the Loan of the said Money, B. should grant to A. an Annuity of 22*l.* during the two Years if A. should so long live; the Grant was made afterwards in performance of the Bargain, the Land was conveyed for certain Years, with a Proviso upon payment the Term shall cease, this is Usury, and a corrupt Bargain, notwithstanding it is, if he shall so long live: The Court gave no regard to the Proviso of Redemption, because the Redemption was not appointed till the end of the two Years, so that A. was assured of the Usury, in the mean time,

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*how defamed at Common-Law.*

*vid. Burton's Case. 2 Rol. Rep. 47. Roberts and Treuwil*; it was said to be agreed in this Case, a corrupt Agreement, makes a good Assurance void, but a corrupt Assurance doth not make the Agreement corrupt.

Debt on Bond, conditioned; if a Ship sent to Sea, or the Goods, or the Obligor return safe to pay to him a Sum *ultra* the Use allowed by the Statute for the Loan of an 100 *l.* and also the 100 *l.* It was on Demurrer objected that this was an Usurious Contract, because the payment depends upon so many things of which one in probability will happen: But *per Cur.* this is a good Bill of Bottomry, and allowable amongst Merchants for the great Perils of the Sea, and not like to the Case in 5 *Rep.* where the Condition is to pay within Six Months, if one of the three Persons be alive, for by the same reason he may put in 10 Lives, 1 *Levins* 54. *Sayer*, and another went to *Newfound-Land*, and another lent to him 100 *l.* for a Year to Victual his Ship, and if he returned with his Ship, he was to have so many thousands of Fish, and expresseth at what rate, which exceeded the Interest which the Statute allows, and if he did not return, that then he would lose his Principal; It was adjudged to be no Usury: But this Case is more fully adjudged in 2 *Cock.*

Where  
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of whic  
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bability  
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Bottomr

Bottomr

Debt on Bond, Defendant pleaded the Statute of Usury, and sheweth that a Ship went to Fish in *Newfound Land* (which Voyage might be performed in 8 Months) and that

*A The Nature of Usury, and*

the Plaintiff delivered 50*l.* to the Defendant, to pay 60*l.* upon the return of the Ship to *Dartmouth*, and if the said Ship by occasion of Leakage or Tempest, should not return from *Newfound-Land* to *Dartmouth*, then the Defendant should pay the Principal Money, viz. 50*l.* only, and if the Ship never returned, he should pay nothing, *Per Cur.* it is not Usury within the Statute, for if the Ship had stayed at *Newfound Land* 2 or 3 Years, he should have paid at the return of the Ship but 60*l.* and if the Ship never returned, then nothing, so as the Plaintiff ran an hazard of having less than the Interest which the Law allows, and possibly neither Principal nor Interest, *Crg. Jac. 208. Sharply and Hurrel.*

*Bedingfield* and *Ashleys* Case upon Evidence was, one G. delivered to *Ashley* 26 *El.* 100*l.* who by Indenture covenanted with G. that he would pay to every of the Children of G. which were then alive and should be alive at the end of 10 Years 80*l.* G. having then 5 Daughters, and for Assurance thereof mortgaged his Mannor of *W.* and was bound in a Statute of 500*l.* The Question was, if this was Usury. *Per Cur.* it is not Usury, for it is a mere casual Bargain, and a great hazard but that in 10 Years all the Daughters, or some of them will be dead, and if any of them be not alive, he shall save 80*l.* But if it were that he should pay 400*l.* at the end of 10 Years, if any of them were alive, it had been a greater doubt; or if it had been

ard.

casual  
gain and  
Hazard.

bability.



een at the end of one or two Years 300 l. if any of the said Children were alive, that had been Usury, for in all probability one of them would continue alive for so short a time, but in 10 Years time are many alterations, *Cro. El. 741.*

Debt on Bod of 300 l. which was upon Condition, that if such a Ship go to *Surat* in the *East-Indies*, and return safe to *London*, &c. or if the Owner, or the Goods return safe, &c. that then the Defendant shall pay to the Plaintiff the Principal, and 40 l. for every 100 l. But if the Ship, &c. perish by unavoidable casualty of Sea, Fire or Enemies, to be proved by sufficient Witnesses, then the Plaintiff to have nothing *Per Cur.* this is not Usury within the Statute, but a good Bottomree contract; and Chief Justice *Bridgman* took a difference between a Bargain and a loan; for where there is a Bargain *de plano* (as here) and the Principal hazarded, this cannot be within the Statute of Usury, otherwise of a Loan, where it is intended the Principal is not hazarded, *Sid. 1. 27, 28. Soame and Gleem.*

Bottomree Contract.

Difference between a Bargain and Loan.

Principal hazarded or not hazarded.

Error of a Judgment on a single Bill, Defendant pleads Usurious Agreement, that the Plaintiff lent the Defendant 10 l. and if the Ship returned, to pay 3 l. Plaintiff demur'd. *Per Cur.* this is good and bare Bottomree, *Keb. 62. Cham and Tayler.*

Bottomree.

It is Usury  
to accept or  
a Lease  
for 300*l.* at  
35*l.* per An.  
Condition  
to be void  
if he pay  
300*l.* at  
the end of  
4 Years, for  
it is but an  
Annuity  
determina-  
ble by the  
Grantor  
when he  
pleaseth.

*Brown* made a Lease of an House of the Earl of *Suffolk* for 40 Years at 5*l.* Rent per An. *Brown* agreed with *Drue* to assign this Term to him for 300*l.* but *Drue* not having Money, *Drury* by agreement with *Drue*, paid the 300*l.* and took the Assignment to himself, and then *Drury* demised the House to *Drue* for 39 Years and 3 Quarters of a Year at the Rent of 35*l.* whereof 5*l.* to be paid to the Earl of *Suffolk*, and the 30*l.* residue to *Drury* to his own Use. *Drue* Covenanted to pay the Rent, &c. and *Drury* Covenanted that if at the end of 4 Years, *Drue* pay to him 200*l.* then the Rent shall cease, and then he should convey the residue of the Term to *Drue*, Per *Hales*, this was not Usury within the Statute, for *Drue* was not obliged to pay the 300*l.* to *Drury*; but at his Election, he might pay if he would, and by it determine the Rent, and have the Term, so it is not in Effect but a Bargain and Sale for an Annuity of 30*l.* per An. for 39 Years and 3 Quarters for 300*l.* to be secured in this manner but determinable sooner if the Grantee pleased; but the Grantee had no Remedy to have back the 300*l.* and so the acceptance of 7*l.* 10*s.* is not Usury: But if *Drury* had any security to repay the 300*l.* or by any collateral Agreement, it was to be repaid, and this manner of Contract contrived to avoid the Sta-

otherwise it would be void, 2 Leon. 8.

King against Drury.

Replevin. Defendant avowed for 20 l. a year, Annuity granted for Years payable upon demand, Plaintiff demands Oyer of the record, wherein it appeared, that for 100 l. rent of 20 l. per Ann. was granted for 3 years, and another of 20 l. for 2 Years, if R. and T. should so long live, and the Plaintiff pleaded the Statute of Usury *Per Cur.* and it been Laid to be upon Loan of Money had been Usurious, but being a Bargain for Money its no Usury, Pasch. 6 Jac. B. C. *Butterel and Harrington.*

A Condition to pay 20 l. per Ann. during life, is no Usury but an absolute Bargain. The Case of *Fountain and Gryner* was, Bond of 20 l. conditioned for the payment of 20 l. per Ann. during the lives of the Plaintiff's wife and Son. Defendant pleaded the Statute of Usury, and how he came to the Plaintiff to borrow 120 l. of him according to the rate of 10 l. per Cent. who refused to lend the same, but corruptly offered to deliver 120 l. to him if he would be bound to pay 20 l. per Ann. during the Plaintiff's Wife's and his Son's Lives, and thereupon the Defendant entered into the said Bond for security of the payment of the said 20 l. per Ann. to them, which is above the rate of 10 l. per Cent. and so the Bond supposed to be void, whereupon it was demurred, and resolved that (this being an absolute Bargain, in consideration

Annuity.

Bargain for Lives.



No agree-  
ment to  
have the  
Principal  
Money.

sideration for the payment of 20 *l. per Ann.* during two Lives, and no agreement to have the Principal Money) was out of the Statutes of Usury; but if there had been an Provision made for the re-payment of the Principal, altho' not expressed within the Bond, it had been an Usurious Agreement and lending within the said Statutes. Upon the same reason of a Bargain, tho it is more certain, was *Tanfeild* and *Finch's Case* adjudged. *Finch* gave to *Tanfeild* 566 *l.* for an Annuity of 120 *l. per Ann.* during 23 Years; this no Usury, when there was no Communication between them to have any Consideration for the Loan of the 566 *l.* and if it had been 40 *l. per Ann.* for 40 Years for 100 *l.* it had been no Usury no more than if one for 100 *l.* purchase Lands of 40 *l. per Ann.* but this Case went farther: After the grant of the said Annuity of 120 *l.* for 23 Years for the said 566 *l.* in hand paid *T.* for the assurance of the said Annuity in fee of *F.* of Land worth 100 *l. per Ann.* to the Use of *T.* and his Heirs, on condition that if the Money were not paid it should be to the use of *F.* in fee. *Per Cur.* this is no Usury, for the Mortgage was only for the assurance of the Annuity: This was an Information upon Statute of 13 *Eliz.* for Usury.

A plain Bargain, and no Communication of a Loan.

A Mortgage for the assurance of an Annuity and no Usury.

If a Man giveth an 100 *l.* for an Annuity of 20 *l. per Ann.* this is not Usury, for he shall never have his stock of 100 *l.* again  
*Cro. El. 27.*

Debt on Bond to pay 100*l.* on Marriage of the Daughter, and if either Plaintiff or Defendant die before, then nothing. Defendant pleads the Statute of Usury, and that this was for the Loan of 30*l.* before delivered. Plaintiff demurred. *Per Cur.* this is plane Bottomree, 3 *Keb.* 304. Long and Whar-

Bottomree.

So that in Cases of casual Usury observe these Diversities,

1. If I lend 100*l.* to have 120*l.* at the years end, upon a casualty, if the casualty go to the Interest only, and not to the Principal, this is Usury, for he is sure of the Principal come what will; but if the Principal and Interest are both in hazard, it is not then Usury, as in *Dartmouths Case, Supra.*

Casualty goes to the interest only.

2. If I secure both Interest and Principal, and if it be at the will of the Party who is to pay it, its no Usury; as if I lend to one 100*l.* for two Years to pay for the Loan thereof 30*l.* and if he pay the Principal at the Years end, he shall pay nothing for the Interest, this is not Usury, for the Party hath his Election, and may pay it at the first Years end, and to discharge himself, as was in *Roberts and Tremaine's Case.* The Case was, C. C. seiz'd of Land in Fee, it was agreed that Mary A. should lend him 150*l.* and for security of repayment, C. C. Leased to the said Mary the Close in Question for 60 Years, to com-

To pay or not at Election.

commence at the end of two Years, on Condition, that if he paid the 150*l.* at the end of two Years, then the Lease should be void: And it was then farther agreed between them, that C. C. for the deferring and giving day of payment of the said 150*l.* for two Years should pay to Mary for Interest Yearly 22*l.* 10*s.* quarterly, if the said Mary should so long live, and this was executed by Lease and Fine accordingly. The Question was, if this were an Usurious Contract because a meer casual Bargain; for if she died before any day of payment of the Rent, the Rent was gone, and yet she should retain the 150*l.* for two Years, and pay nothing for it *Per Cur.* it is an Usurious Bargain, for by intendment she might live above two Years and it is an apparent possibility that she should receive that Consideration whereby she is bound within the Statute, *Cro. Jac.* 507, 508.

Where it is  
a casual Bar-  
gain, and  
yet Usuri-  
ous.

Apparent  
probability.

*What is an Usurious Contract in respect of  
Times of Payment.*

17 July, 21 Eliz. T. W. by his Deed grants to A. E. an annual Rent of 20*l.* in Fee, to be paid at Christmas, and St. John Baptist, the first payment to commence at Christmas, which should be in the Year of our Lord God 1680. A. E. by Deed indentured and inrolled Bargains and sells the Rent to H. H. and his Heirs, who for Rent Arrear avows. The Plaintiff in bar of the  
Avowry



owry pleads that the said 17 July Ann. 21.  
*inter eosdem*, T. W. and A. E. *taliter con-*  
*dat' fuit per viam corrupte bargainie scil. quod*  
*A. mutuo daret prefat' T. W. 100 l. &*  
*idem T. concederet* to the said A. and  
 Heirs the Rent of 20 l. under condition,  
 if the said T. shall pay to the said A.  
 10 l. 17 July 1680, that then the Rent  
 should cease. *Qui quidem annuus Reditus pro*  
*100 l. in forma pred. solubil. excedit se-*  
*dum rat' 10 l. per 100 l. pro uno anno*  
 &c. Avowant demurs Judgment for  
 A. This is not against the Statute of Usury,  
 nothing was to be paid by T. W. the  
 Grantor within a Year and a Quarter after  
 Grant made, for within the 17 day of  
 1579 and Christmas 1580, no Rent is  
 to be paid, and if the Grantor had  
 paid the said 100 l. 17 July 1580, the Rent  
 should cease without paying any thing for  
 the said 100 l. and so the Court held it a  
 plain Bargain and purchase conditional of such  
 Rent, and no Usury; for it is in the election  
 of the Grantor to have paid the said 100 l.  
 and to have avoided the Rent, so that the  
 Grantee (as the Nature of Usury is) was  
 assured of any recompence for his for-  
 bearing the said 100 l. for a Year, and the  
 Rent of 20 l. per Ann. is but as a penal-  
 ty to the Grantor and assurance to the Gran-  
 tee for the payment of the said 100 l. But the  
 Court resolved, had it been agreed between  
 the Grantor and Grantee, that notwithstan-  
 ding

A plain Bar-  
 gain and  
 purchase  
 conditional  
 of a Rent.

Election.

Power of  
Redemption,  
on, and yet  
a corrupt  
agreement.

ding such power of Redemption that the  
should not be paid at the day, and that  
Clause of Redemption was inserted to make  
an evasion out of the Statute, then it has  
been Usury.

*Grysel*  
*W. Whitchot*  
*Trin. - O. Car.*  
*1. B. R.*  
*Cro. Car. 203.*

A. lent B. 100 l. for a Year, and took  
Bond for 10 l. Interest (Money being the  
at 10 l. per Cent.) payable 5 l. half-yearly  
Per Cur<sup>a</sup> this is not Usury within the Statute  
More No. 842, *Worleys Case* Noy 171. C  
Jac. 25.

But this Case is well Reported in Cro. J  
25. and *Yelverton* 30. 31. *Barnes and W*  
*ley's* 7. and settled. The Case was; a M  
lends an 100 l. for a Year, and agrees  
give 10 l. for it, to be paid half-yearly, t  
is not Usury, for the Statute saith he sh  
not receive or take above that rate, and he  
he doth not take any more; for when he h  
forborn his Money half a Year, and t  
other has the use of his Money for that ti  
he shall receive of him 5 l. so he doth not  
ceive more from him for the Year than 10  
and it is the usual course, if one lend 100  
for a Year, and takes Land in Mortgage  
the value of 10 l. per Ann. to receive the  
annual Profits every day, is not Usury, becau  
he receives in the whole but 10 l. only.  
if he takes the grant of a Rent charge pa  
able Quarterly; but if he had agreed to ta  
his Money for the forbearance, instant  
when he made it, that had made the Assuran  
void. For then he had not lent the ent

Sum for one Year, and the other had not had the use of his Money according to the Intention of the Law. And *Williams* said he knew this difference resolved: But *Telverton* and *Fenner contra*. For when he lends it for one entire Year, he ought to forbear his Interest, otherwise he doth not lend it for a Year, and then the other paid more than he ought by the Statute: But Judgment by 3 Judges, *Quod querens nil capiat per billam*, because this was in *And' quer'* to be relieved upon a Statute.

Note, Security only doth not make an Usurious Contract, for the advantage that the Lender doth receive must be in Land or Money or Money's worth. If one take a Mortgage and a Bond, or Covenant both at once for the Interest, this is not Usury. *Jenk. Cent. 6. Case 39.* Its not Usury if one take any thing in the bye for a Pawn or Security only.

*In respect of the wording or mistake of the Scrivener.*

It was ruled in *Baddard & Oddies Case*, *Mod. 307.* that to avoid a Security by reason of Usury, the Contract it self must be Usurious; for if the Party takes afterwards more than is allowed, that will not make it so; so that if the agreement of the Parties be honest, but made otherwise by the mistake of a Scrivener, yet it is not Usury. As if a

C

Mortgage



Mortgagee  
entitled to  
the Interest  
and the  
Profit.

Mortgage be made for 100 l. with Proviso to be void on payment of 106 l. at the end of one Year, and there is no Covenant for the Mortgagor to take the Profits till default be made in payment, so that in strictness the Mortgagee is intitled to the Interest, and the Profits, yet if this was not expressed, the agreement is not Usurious. 2 Mod. 307  
1 Sanders 295.

An 100 l. was lent, and it was agreed that 10 l. should be paid for the use of whole Year, the 100 l. was lent 23d May 1627, and to be paid 24 May 1628, the Scrivener made this payable 24 May then next following, it was secured by Lease. *Per Curiam* this is void by the Statute of Usury. *Per Dodderidge*, the construction shall be 24 day of the present May, *ad prox' antecedens fiat Relatio* this mistake of the Scrivener made the Lease void. So if the agreement be of a whole Year and the Scrivener draw it for 12 Months, 2 Rol. Rep. 414. *Buckly and Gildbank*: But this is otherwise, reported in *Cro. Jac.* 677. It was upon Special Verdict agreed 23 May 1617, that the Money should be lent for a Year then next following and tho' generally 24 May next following shall be intended the 24th day of the same Month, yet forasmuch as it was found so as aforesaid, and the Assurances were made for payment at the end of the Year, and by the Scriveners mistake, it was made payable the next day, it is not Usury: For there was

Mistake of  
Scrivener,  
where there  
is no cor-  
rupt agree-  
ment.

corrupt agreement, and the act of a Stranger shall not bring him within the danger of the Statute, especially it being found that he did not require payment till after the Year.

*of subsequent Receipt, Continuance, Agreement after the first Contract.*

*Pollard and Scoly's Case.*

P. sold to the Defendant two Oxen 22d June, 32 Eliz. for 6 l, 6 s. 8 d. to be paid All-Saints next, and at the same day Scoly the Defendant requir'd a longer day of payment, and P. gave him day till the first of May next, paying to him for the forbearance of his Money 3 Quarters of Wheat, which was above the value of 10 l. per Cent. per Annum. 13 Eliz. The Defendant in debt for the 6 l. 6 s. 8 d. doth plead this and would void the Contract. *Per Cur'* the Statute doth not make the contract void, which was duly made, but doth only avoid all Contracts for Usury, and this last Contract is void being against the Statute; but the first is good being made *bona fide*. Cro. Eliz. 20.

Last contract may be void against the Stat. but not the first.

Debt was brought upon a Bond: Defendant pleads the Statute of Usury, and shews corrupt agreement for Money lent in the Year 32 to be paid in 33, and afterwards in 35 a new Bond was given in part of the first sum, and it was pretended that this Bond was void; but *per Cur'* because the first Bond

A new Bond given in part of the first Sum.

*Of Usury, and Usurious Contracts.*

was no Corruption, the later shall not be  
1 *Brownl. 73. Vaughan and Chambers.*

Brokers.

Tho the  
time of for-  
bearance  
be past, yet  
punishable.

Statute  
strictly ex-  
pounded,  
because of  
Brokers.

Information on Stat. of Usury, for taking  
the 30th of May in the 20th Year of the  
King 42 s. *pro deferendo* 25 l. for 3 Quarters  
of a Year (*viz.* from the 30th of August An  
19.) and found for the King. On not Guilty  
It was moved to arrest Judgment, that this  
was not within the Statute, which extends  
only where there is an Usurious Contract in  
the beginning, and there it makes the Secu-  
rity void: Or if there be an Agreement af-  
ter the Money lent for forbearance upon con-  
sideration for paying more than the Statute  
allows for Interest, this is punishable in In-  
dictment or Information, but the Money is  
not lost. But in this case the time of for-  
bearance was past, and the Party might give  
what he pleased in recompence for it, there  
being no precedent Agreement to inforce him  
to it: *Sed non allocatur*, for the Court will  
expound the Statute strictly. And if liberty  
were to be allowed in this Case, the Brokers  
would oppress People by deteyning the  
Pawn, unless the Party give them what they  
please after time of failure of Payment,  
*Ventr' 38.*



## Usury.

*Inform' Demand treble value. Cro. Jac. 440.*

**I**Nformation 12 Car. 2. c. 13. for taking excessive Usury. That the Defendant 16 No. 20 Car. 2. did lend to I. S. 20 l. till June then next following, and that afterwards (*viz.*) *ad finem termini prædicti*, he took of the said I. S. *corruptive* and *extorsive* for the Loan aforesaid 30 s. which was above the rate by the said Statute allowed. Upon not guilty, a Verdict was found against the Defendant; it was moved in arrest of Judgment, because the corrupt Agreement ought to be within the Statute at the making of the Contract, and not at the end of the Term, as it is laid in the Information. *Per Twisdem.*

There is this difference; if the Party, who lends the Money, Contracts for more than 6 per Cent. all the Assurance is void; But if he does not Contract for more than the Statute allows, and afterwards will take more, the Assurance shall not be voided, but the Party shall forfeit the Treble value. As if a Man, when Money was at 8 l. per Cent. Lends Money, and takes Bond for the same, and then the Statute 12 Car. 2. is made, and he will continue the old Interest upon that Bond, the Bond shall not be avoided by such acceptance of Interest, but the Party shall

*Diversity.*

Where the Assurances shall not be void, but the Party shall forfeit the treble Value,

*Of Usury, and Usurious Contracts.*

shall forfeit the treble value by the Statute Raym. 196. the King against Allen.

An Information on 12 Car. c. 13. for receiving *corrupte per viam accomodationis* 42*l.* of one Hardy, for the forbearance of 25*l.* from 19 July to 30 May. It was excepted in arrest of Judgment, in that here appears no Bargain to be made, but that the Payment was Voluntary, being after the forbearance so there was no Usury given for any day of payment to come, the Court agreed, that where there is no Contract before, or during the continuance of the Money, the payment after may be no Usury: But in this Case there being a Pawn given, and the Broker refusing Delivery, unless so much more were paid, Judgment *pro Quer.* that he forfeit 25*l.* 2. Keb. 531. the King against Walker.

Voluntary payment.

Brokers. No corrupt Contract, but refusal of delivery unless so much were paid.

Second Defeasance for more than the Statute allows.

*In Debt the Defendant pleads the Statute of Usury.*

If there be an Agreement before the forfeiture of a Recognizance, and the 2d Defeasance for more than 10*l.* per Cent. according to the principal Debt, yet it is not within the Statute of 13 Eliz. but before the forfeiture it had been otherwise. Noy p. Hollingsworth and Parkhurst.

In what Cases it shall be as a Penalty or *Nomine pœnæ* and no Usury.

And this is upon the Diversity between *Interesse damni* & *Interesse Lucri*.

If A. Surrenders a Copihold to B. on condition, that if he pay 80 l. to B. at a day certain, that the surrender shall be void, and afterwards it was agreed between them, that A. should not pay the Money, but shall forfeit it, and in Consideration thereof, B. assumed to pay to A. at a certain day 60 l. and 6 l. *per Ann.* from the said day for Usury and Interest of the said 60 l. till it be paid. Action on the Case will lie upon this Promise, for it is good, and not against Law: For this 6 l. shall be taken *pro Interesse damni*, and not *Lucri*; and this is but limited as a Penalty for the Non-payment of the 60 l. as a *Nomine pœnæ*, or Obligation with a Condition: And tho the Consideration be non-leaseance, yet it is good, it is a benefit to the Assumor, because by this his Estate is become Absolute. And if I purchase Land of you for an 100 l. and because I do not pay you, I agree to give 10 l. *per Ann.* till I do pay the entire Sum, its no Usury. Its not Usury, unless it be *hors.* 2 *Rol. Rep.* 469. *Oli-*  
*ver's Case.*



*Of Usury, and Usurious Contracts.*

Promise to  
become  
bound to  
pay 10*l.*  
with the In-  
terest of it  
for a Year.

If *A.* be in debt to *B.* 10*l.* and *A.* in consideration that *B.* gives to him Day for a Year next ensuing for the payment of it, assumes to be bound by his Obligation to the said *B.* for payment of 10*l.* with the Interest of it at the end of the Year aforesaid; Action lies on this Promise, alledging that *A.* did not pay the 10*l.* nor became bound to pay the 10*l.* with the Interest of it at the end of the Year, for this Interest is but damage for the Money by way of Penalty. 1 *Rol. abrid.* 801. *Vallence's Case.*

*Usury, as to other Things, as Goods Chattels, Leases, &c. and not barely upon Loan of Money.*

*The Statute.*

**I**F one comes to borrow Money, and the other saith, that he will not lend Money, but he will sell Corn, Lead, Tin, &c. and give day of payment of it at such a rate, which is in truth above Usury allowed by the Statute, it is Usury, *Wicks Case in Scaccario.*

Information in the Exchequer, for that the Defendant *per viam corrupt' bargain' & chevi-  
santie fact'* between the Defendant and one Edward Hanes, received of John Haines Administrator of the said Ed. between the 23 June, 14 Jac. 65 l. (*viz.*) for the use and Occupation of an House in C. from *Midsummer* 14 Jac. unto *Mich.* 14 Jac. 15 l. & *pro absentione & detentione solucon'* 1000 l. from the 16 April. 1614, for six Months then following 50 l. *Ubi revera pred. mesuagium ad tunc valebat dimittend' per ann'* 20 l. & *non ultra*, and therefore he demanded 3000 l. being the treble the value of the 1000 l. so forborn. *Verdict pro Quer'*. It was moved in arrest of Judgment. 1. Because it is not shewed what the Bargain was in certain, but generally *per viam corrupt'*, &c. *sed non aliter*. For so is the usual Course in the Exchequer. 2. Because it is not shewed, that the House was not worth above 20 l. *per Ann.* at the time of the Bargain: For peradventure, by Fire or Tempest it may fall *in toto vel in parte*, so at the time of the Receipt it was worth but 20 l. and here *ad tunc valebat* cannot, refer to the time of the Bargain, for there is no day laid thereof: But there be 3 times alledged. 1. Between 23 June 14 Jac. 2. The Occupation of the House from *Midsummer* to *Michaelmas*. 3. The forbearance of the Money from 16 April, 14 Jac. for six Months following, and then it is said *ubi revera*

*Ad tunc valebat* to what it refers.

It must be  
alleged to  
be of such a  
value & no  
more at the  
time of the  
Bargain.

*vera mesuagium pred. adtunc valebat, &c.* so it is uncertain to which of those times *adtunc* refers. And if it refer to the last Antecedent as it always must, then this is no Offence. And in such Cases the usual Course is, to allege it to be of such a value, and no more, at the time of the Bargain, when the want of the value of the House is the sole Offence or Cheivance which is pretended. *Cro. Jac. 440. Bedo and Sanderson: Pro Quer' Judgment.*

It is not U-  
sury to ac-  
cept of a  
Lease for  
300*l.* at  
35*l.* per  
Ann. con-  
dition to be  
void if he  
pay 300*l.*  
at the end  
of 4 Years,  
for it is but  
an Annuity  
determina-  
ble by the  
Grantor  
when he  
pleaseth.

B. had a Lease of a House for 40 Years at 5*l.* per Annum Rent, B. agreed with D. to assign this Term to him for 300*l.* but D. not having Money, L. by Agreement with D. paid the 300*l.* and took the Assignment to himself, and then L. demised the House to D. for 39 Years and 3 Quarters of a Year, at the Rent of 35*l.* whereof Five Pound to be paid to the Ground-Landlord, and the 30*l.* residue to L. for his own Use. D. Covenants to pay the Rent, &c. and L. Covenants that if at the end of 4 Years, D. pay to him 300*l.* then the Rent shall cease, and then he should convey the residue of the Term to D. By *Hales.* this was not Usury within the Statute, for D. was not obliged to pay the 300*l.* to L. but at his Election: He might pay it if he would, and by it determine the Rent, and have the Term, so it is not in Effect but a Bargain and Sale for an Annuity of 30*l.* per

*Annuum*



*Annum* for 39 Years and 3 Quarters for 300*l.* to be secured in this manner, but determinable sooner if the Grantor pleased; but the Grantee had no remedy to have back the 300*l.* and so the acceptance of 7*l.* 10*s.* is not Usury: But if *L.* had any security to repay the 300*l.* or if by any collateral Agreement, it was to be repaid, and this manner of Contract was contrived to avoid the Statute, otherwise it would be, 2 *Levins* 8. the King against *Drury*.

Collateral Agreement or Security may make it Usury.

It was agreed, that for an Horse and 2 Tun of Iron, the Plaintiff should have for them, and for forbearing the Money such a small time 50*l.* whereas in truth they were but of the value of 40*l.* and the Bond was made for the payment of 50*l.* 1 *Leon.* 148. *Kinnerly and Smart.* Judgment *per Quer.*

Goods overvalued or undervalued.

At such a day and place there was a Communication and Agreement between them for lending of Money, and that the Plaintiff should have so many Oxen which were of such a value above 10*l.* and for performance of this Usurious Contract the Bond was made, and pleads the Statute of 13 *El.* to avoid the Bond. Plaintiff replies, it was well and duly made upon good Consideration, *absq; hoc*, Pleads. that it was made for such Usurious Contract. *Cro. El.* 191. The same Case.

*Of Usury, and Usurious Contracts.*

Beecher delivered Wares of the value of 100 l. and no more, and took an Obligation with a Condition to re-deliver the Wares to Beecher in a Month, or to pay 120 l. at the Years end; it seemed to be Usury, especially if the intent was to borrow Money at the first Moor 520.

Intent.

Original in *Andita Querela*, upon a Statute Staple for Goods avoided by Usury.

Elizabetha, &c. *Justic' suis de Banc' salu- tem Cum ex gravi querela W. D. de &c. accepimus quid cum ipse 26 die Junij An. Regni nri 12 apud L. &c. coram I. P. Milite Capitali Justiciario nro' ad plita' coram nobis tenend' assign' per quoddam scriptu' suum obligatorium ad tunc & ibid' recogn' concessisset se teneri' E. M. de L. gen' in 236 l. solvend' eid' E. ad certum diem in eod' scripto content' Et si idem W. de fecisset in solucone debiti pred. voluit & concessit per idem scriptu' quod tunc curreret super em- hered' & executores suos pena in Statut' stapul- de debito pro Merchandizis in ead' empt' recupe- rand' ordinat' provis. Cumq; etiam per quoddam actum in Parlamento nro' apud Westm' in Com- Mid' 2 die Aprilis An. Regni 13 tent' inter alia inactat' fuit autoritate ejusdem Parliamenti quod quidam actus edit' in Parlamento Dom- Henrici nuper Regis Anglie, &c. 8 patris nostri precharissimi tent' apud Westm' pred. An. Regni sui 37 pro reformatione Usure ab & post 25 die*

em Junij tunc prox sequen' pred. 2 diem Apri-  
 is An. Regni 13 supradictō revivificat' foret  
 & staret in plenīs Robore vigore et effectu in  
 quo quidem Actū edit' in pred. Parlamento dicti  
 nup' Regis H. 8. An. Regni sui 37 supradict'  
 int' alia inactitat' fuit antoritate ejusdem Parlia-  
 menti qd. nulla persona sive persone cujuscunq;  
 grad. status qualitatis, &c. ut in le Statute usq;  
 pleni' apparet. Et ulterius inactitat' &c. ut  
 in Statuto usq; prout per eundem Actū de An.  
 Regni 13 supradictō plenius apparet. Cumq; etiam  
 pred. E. post diem, &c. in predictō actū de An.  
 13 suprad. spec' & ante confectiō' scripti predicti  
 scil. predictō 26 die Junij An. Regni 37 supra-  
 dictō apud &c. per corrupt' & deceptivam viam  
 vel Conveyanciam (vocat' shift) vendidit &  
 deliberavit eid' W. diversa mercimonia videl'  
 unū torque aureum (vocat' a Chain of Gold) cum  
 Diamondibus Rubinis Smaragdis & Unionibus  
 in eod' infixis Anglice set with Diamonds, Ru-  
 bies, Emeralds, and Pearls) tunc valoris 182 l.  
 tantum & non ultra ad habend' de eod. W. pro  
 eisdem mercimoniis 110 l. solvend. eid. E. 9.  
 die Sept. tunc proxime sequen' & ad tunc & ibi-  
 dem int' eosdem W. & E. corrupt' concordat.  
 & agreeat' fuit qd. idem W. per scriptū obliga-  
 torium suum in natura Statut' stapule concederet  
 se teneri pefat' E. in sum' 230 l. pro solucon'  
 pred. 110 l. sic corrupt' in forma pred. reservat'  
 super quod idem W. post a scil' pred. 26 die Junij  
 An. regni 37 supradict' coram pefat. Cap. Justi.  
 iur. nostro per scriptū suum obligatorium in for-



## Of Usury, and Usurious Contracts.

*ma pred. recognit' concessisset te tener' prefato E. in pred. 236 l. pro solucone pred. 110 l. secundum formam & effectum agreementi pred. Sicq; script' illud in forma pred. recogn' ex pred. causa usure pred. exceden' ratam 10 l. pro uno Anno pro 100 l. vigore pred. Statuti de Anno 13 pred. edit' vacuu' in Lege devenit prout idem W. vijs & modis quibus convenit proatus est edocere pd. tamen E. Executionem de pred. 230 l. pretextu Statuti predicti ex causa pred. recogn' tam tarde prosecut' est ad ipsius W. damu' non modicum & gravamen Et quia eid' W. nolumus in hac parte aliqualit. injuriari. volentesq; inde fieri qd. est justum Vobis mandamus qd. Audita Querela ipsius W. in hac parte vocatisq; coram vobis partibus predictis. auditisq; hinc inde ear. rationibus eid' W. plenam & celerem justitiam fieri faciat. prout de jure & secundum Legem & consuet' reg' nri Anglie fuit faciend T. meipsa &c. 12 Martij An. Regni 39.*

## Of Conveyances, Fines, &c. upon Usurious Contracts.

*What Conveyance, Assurance, void or not, and how.*

An Usurious Contract may be upon a Fine, Recovery, Bargain and Sale, Statute or Recognisance as well as upon Deeds or Bonds, and then they will be void all of them by Statute of 13 El. c. 8. But a Judgment cannot be said to be an Usurious Contract, and so by Plea avoided. 1 Cro. 507. 26.

And

And if a Fine be levied upon an Usurious Contract, this may be avoided by Averment by the Statute of 13 El. c. 8. So if for Fraud to Purchasers, 3 Rep. 80. *a. Farmers Case.*

In Replevin, Defendant Avows for a Rent-charge of 20 l. Arrear, to commence at Christmas 1580, &c. The Plaintiff pleads the Statute of Usury, and alledges that the 17th day of July An. 21 El. 1579 int. T. W. & A. G. *talit. concordatum fuit per viam corrupte Bargainie sic. qd. pred. A. mutuo daret pefat. T. W. centum Libras & qd. idem T. concederet to the said Anthony and his Heirs, a Rent of 20 l. under a Condition, that if the said Thomas, shall pay to the said Anthony 100 l. 17 July 1581, that then the said Rent should cease, upon which corrupt Bargain Tho. receives the 100 l. and then grants the said Rent accordingly under such Condition. Qui videm annuus redditus pro pred. 100 l. excedit ratam 10 l. pro 100 l. pro uno anno contra formam statuti, &c. l' avowant demur Per Jur.* this Bargain is not against the Statute of Usury, for nothing was to be paid by the Grantor within a Year and a Quarter after the Grant made, for within the 17 July 1579 and Christmas 1580, no Rent is limited to be paid, and if the Grantor had paid the 100 l. the Rent shall cease without paying any thing for the 100 l. so that this was a plain Agreement and conditional Purchase of such Rent, and

Conditional  
Purchase  
of a Rent.

no

## Of Usury, and Usurious Contracts.

no Usury, and it was in the Election of the Grantor to pay the 100*l.* and so frustrate the Rent, and the Grantee (as the nature of Usury is) was not assured of any recompence for the forbearance of the 100*l.* But if it were agreed that notwithstanding the Condition that the 100*l.* should not be paid and the Clause of Redemption inserted to make an evasion out of the Statute, it is Usury. *Rep. Burton's Case.*

### Mortgage.

**B** Aron and Feme Bargain and sell Land in Fee, on Condition, Defendant in Replevin, pleads the Statute of Usury, and alledgeth, that they received 200*l.* for a Year for use of the Plaintiff, and the Agreement was that they should pay 200*l.* at the day and 20*l.* for use, and the Land aforesaid was to be conveyed to the Plaintiff upon Condition of payment at the day, the Grant to be void, and avers the Land is worth 12*l.* per *Annum*, and so double Use. Plaintiff rejoyns that upon the lending, that the Defendant should have the Profits of the Lands, until the Condition was broken, *absq; hoc*, that it was agreed they should have the profits of the Land, and also 20*l.* Use. *Per Cur.* the Plea is good, tho' it is not in the Deed, that the Mortgagor shall take the Profits until failure of payment, yet it may be averred if the

Pleas.

Not exprest  
that the  
Mortgagor  
shall take  
the Profit  
till, &c. yet  
it may be  
averred.

*1. 34. 37.  
38.*

Statute



Statute is pleaded. *Rol. Rep. 41. Dodd and Ellington.*

If a Mortgage be made for 100*l.* with proviso to be void upon payment of 106*l.* at the end of one Year, and there is no Covenant for the Mortgagor to take the Profits till default be made in Payment, so that in strictness, the Mortgagee is intitled to the Interest and the Profits, yet if this was not express'd the Agreement is not Usurious. 2 *Mod. 307. 1 Sanders 295. 1 Mod. 69.*

If there is a power of Redemption in a conditional Purchase Deed, yet if it be agreed between the Grantor and Grantee, that the Money should not be paid at the day, and the Clause of Redemption was inserted to make Evasion of the Statute, it is Usury. *Id. supra Finch and Tanfeild's Case.*

Power of Redemption inserted only to evade the Statute.

If one come to another to borrow 500*l.* of him, and tells him he is unable to pay it together, and therefore desires to pay it in 12 or 13 Years, and offers for his Kindness to give him 200*l.* over and above if he will let him have it so, with the Use of it, and then they cast the Principal and the 200*l.* in an annuity, and at last agreed upon an Annuity of 80*l. per Annum* for 14 Years; this is an Usurious Contract, and yet had the Communication been of a Bargain only, and not of a Loan, and of having the Principal and

Where Agreement for an Annuity shall be taken as Usurious.

Use cast together, it had not been Usury, albeit it were so unreasonable. *Cro. Jac. 252. Goldsb. 1st part Cotterell and Harrington.*

*Mich. 8. Car. 1. B. R. Grisill and Whitcho's*  
Case was,

If one Mortgage Land for 10 *l.* and it is more worth than the Interest of his Money at 8 *l. per Annum*, it was adjudged to be an Usurious Contract, and yet in this Case, it be agreed, that the Feoffor shall take the Profits of the Land, *contra*. And in such Case if the Feoffee doth not take the Profits it shall be presumed he doth so, unless the contrary be shewed.

Prefumption  
on that the  
Mortgagee  
doth take  
the Profits.

p. 32.

Mortgage.

A Man for an 100 *l.* sells his Land upon Condition, that if the Vendor or his Heirs repay the 100 *l. citra Festum Pasche*, then next coming, that then he may re-enter, this is not Usury, for he may pay the Money at any time before *Easter*, so that there is no certainty in the Gain of the Lender, as there is where the Money is to be paid such a Day or Feast certain a Year or two Years after, this is Usury. 29 *H. 8. 126.*

## Of Usurious Mortgages and Agreements.

F. gave to T. 56*l.* for an Annuity of 20*l.* *per Annum* for 23 Years, this is no Usury, being there was no corrupt Communication to have any Consideration for the Loan of the Money, and this Annuity was purchased *bona fide*. After the Grant of this Annuity, T. for the assurance of the said Annuity enfeoffed F. of Lands worth 100*l.* *per Annum* to the use of T. and his Heirs on Condition that if the Money were not paid, it should be to the use of F. in Fee. This *per Cur.* was no Usury, for the Mortgage was only for the Assurance of the Annuity. *Cro. El. 27. Lanfeld and Finch.*

Annuity  
not Usury.

*Roberts and Tremain's Case* was, C. being seized of Land, it was agreed that M. A. should lend him 150*l.* and for security of repayment, C. Leased to M. A. the Lands in Question for 60 Years, to begin at the end of two Years, upon Condition, that if he paid the said 150*l.* at the end of two Years, the Lease to be void. And it was also agreed between them, that the said C. for deferring and giving day of payment of the said 150*l.* for two Years, should pay to the said M. A. for the Interest there 22*l.* 10*s.* quarterly if the said M. A. should so long live, that in performance of this Agreement, tho' M. A. lent the said 150*l.* to C. and he made the said.



## Of Usury, and Usurious Contracts.

Lease for 60 Years, and granted by Fine to the said *M. A.* an Annual Rent of 22 *l.* 10 *s.* to be paid quarterly if the said *M. A.* lived so long, and after conveyed the Inheritance to the Plaintiff. 1 *Qu.* If this is an Usurious Contract within the Statute, because it was a mere casual Bargain; for if she died before any payment of the Rent, the Rent was gone and yet he should retain the 150 *l.* for Years and pay nothing for it: But *per Cur.* it is an Usurious Bargain. For by Intendment she might live above two Years, and is an apparent possibility that she should receive that Consideration, whereby she is within the Statute. 2 *Per Cur.* the Lease *albeit* taken for payment of the Principal Money, and not for the payment of the Usury, yet being security for Money Lent upon Interest, it shall be void by the Statute, *Cro. Jac.* 507.

An Usurious Bargain, tho Casual.

Where the Statute of Usury not to be pleaded.

*A.* Mortgage Lands to *B.* upon an Usurious Contract for 100 *l.* and before the day of payment, *B.* is ousted by *C.* against whom *B.* brings an Action: *C.* cannot plead the Statute of Usury, for he hath no Title. *Leon.* 307.

Not Usury, by reason of a mistake.

It was ruled in *Baddard and Oddye's Case* 2 *Mod.* 307. that to avoid a security by reason of Usury, the Contract it self must be Usurious, for if the Party take afterwards more than is allowed, that will not make it so. So that if the Agreement of the Parties

be Honest, but made otherwise by the mistake of a Scrivener, yet it is not Usury. As if a Mortgage be made for 100*l.* with proviso to be void on the payment of 106*l.* at the end of one Year, and no Covenant for the Martgagor to take the Profits till default be made in payment, so that in strictness the Mortgagee is intitled to the Interest, and the Profits, yet if this was not express'd, the agreement is not Usurious. 2 *Mod.* 307. *Sanders* 295. 1 *Mod.* 69.

Covenant for the Mortgagee to take the Profits.

*Burlacy* brought a Replevin against *Ellington* for taking his Cattel, &c. the Avowant pleads, that one *W. B.* was seised of the place in which, &c. in his Demesne as of fee, and being so seised died, by reason whereof the Land descended to one *Crist* his Daughter and Heir, who took to Husband the Avowant. The Plaintiff in his Bar to the Avowry confesseth that *W. B.* was seised, and that it descended to *C.* who took the Avowant to Husband, but he farther said that 16 April 1 *Jac.* the Husband and Wife by their Deed indented and enrolled did Bargain and sell the same Land to *M.* by fine, and that *M.* 30 *Jac.* sold it to *F. M.* in fee, who being so seised, Licensed the Plaintiff to put in his Cattle. Avowant replies, that in the said Bargain and Sale made by the Husband and Wife a proviso was contained, that if the said *Allington* should pay 100*l.* a Year after, then, &c. and pleaded the Sta-

Profits of the Land above the Interest Money.

tute 13 Eliz. of Usury with an Averment, that the Profits of the Land were 12 l. per Annum. Plaintiff rejoined, that true it is, there is such a Clause in the Indenture, but he farther said, that before the Sealing of the Indenture it was agreed by Word, that the said Ellington should have and receive the Profits, and not the Plaintiff. Avowant Demurs: The

Where the Bargainee may plead a verbal agreement to avoid the Usury.

Qu. was if the Bargainee may plead the verbal Agreement. *Per Cur'* he may do it and avoid the Usury. They all agreed that when a Deed is perfected and delivered as his Deed, that no verbal agreement afterwards may be pleaded in Destruction thereof; but when the Agreement is parcel of the Original Contract and as here it is, it may be pleaded; but if it had been expressed in the Deed, that the Bargainee should have the Profits, and that it was delivered accordingly, that no Agreement or Assignment of the Profits could now avoid it, for it is an Usurious Contract, and Judgment *pro Quer. i Brownl. 191. Burghlacy and Ellington.*

If A surrender a Copy-hold to B. on Condition that he pay 80 l. to B. at a day certain, that the Surrender shall be void, and afterwards it was agreed between them, that A shall not pay the Money, but shall forfeit it, and in Consideration thereof, B. assumed to pay to A. at a certain day 60 l. and 6 l. per Ann. from the said day *pro Usura & interesse* of the said 60 l. till it be paid; Action on



on the Case will lie upon this Promise, for it is good, and not against Law; for this 6 l. shall be taken *pro interesse damn' & non lucri*, and this is but limited as a Penalty for the non payment of the 60 l. as a *nomine pænæ*, or Obligation with a Condition: 2 *Rol. abr.* 801. *Olivers Case.*

*Explication of all the Statutes against Usury.*

*Stat. 37 H. 8. 9.*

None shall sell his *Wares* or *Merchandise* to any, and within three Months after buy the same again at a Lesser price, knowing them to be the same *Wares*; or buy any corrupt Bargain of *Wares*, Money or other things; or buy any Mortgage of Land, and take in Gain for giving day of payment more than according to the rate of 10 l. *per Cent.* for one whole Year, on pain to forfeit the treble value of the *Wares* or Money so put forth and the Profits of such Lands Mortgaged to be divided between the King and the Prosecutor, and besides to suffer Imprisonment, and make Fine at the King's Will.

Stat. 13 El. c. 8.

Is an Enforcement of the Statute of 37 H. 8. and it is herein provided, that all Contracts, Bonds, Assurances upon Usury in lending or doing any thing contrary to the Statute of 37 H. 8. c. 9. shall be void. And that

It is said in *Hiply and Took's Case*, 3 Keb. 682. in Judgment of Usury, a Man may by vertue of the Statute of 37 H. 8. 9. aver it by Usury, and so against a Fine. *Quer. vide post.*

*Jenk. Cent. 7. Case 13.* Information was upon the Statute of Usury. Defendant pleads *nil debet*, and the Jury found an Usurious Receipt, but not an Usurious Loan: It was said, where there is no Loan, but a promise of a Loan, and the Use received according to the Statute in Force; this is not Usury, but breach of Promise. Statute 37 H. 8. doth give an Information upon a Receipt where there is a Loan, not without a Receipt; and Statute 13 El. 9. makes the Contract void upon an Usurious Loan, notwithstanding there be no Receipt.

## Of Usury, and Usurious Contracts.

41

*Beecher's Case* in *B. R.* was, he delivered Wares of the value of 100*l.* and no more, and took Bond with a Condition to re-deliver the Wares to *Beecher* in a Month, or to pay 120*l.* at the Years end.

If *I. S.* lend one 100*l.* for one Year, and upon the Loan Contract with me to give me 10*l.* for the Loan of the same for one Year; if now when I pay him he takes but 10*l.* he shall not be punished for the Contract, but perhaps the Bond shall be void. *Coke in 2 Leon. 39.* there ought to be a taking.

Tho the Information is in the Copulative giving and forbearing, and the Statute is in the Disjunctive giving or forbearing, yet by *Manwood* its good enough, and one word forceth the other. *1 Leon. 95.* *Sir W. Hixey's Case.*

In Information on the Statute of Usury, it was excepted in Arrest of Judgment, because the Agreement *corrupte* to take Use for the time past is not within the Statute, which is not giving day or forbearance, which cannot be, the time being past. *Per Cur'* the Statute is not for the forbearing, but for the forbearance, which may as well refer to time-past as future: And by *Hyde*, It being said *corrupte creatum* the dating of the Bond will not void it, especially the Information being grounded on the Receipt, not on the Contract.

A corrupt Agreement to take use for time past.

Information grounded on the Receipt not on the Contract.

*1 Keb.*



*Of Usury, and Usurious Contracts.*

1 Kelb. 744. the King and Bell against Rant.

*Stat. 12 Car. c. 13.*

None shall take directly or indirectly for the Loan of Money or any Commodities above the rate of Six Pounds for the Forbearance of 100*l*. for a Year, and so after that Rate. All Bonds, Contracts, &c. whereupon more shall be reserved, shall be void: And they that receive more shall forfeit the treble value of the Money or other things Lent.

*Observe, there are two distinct Clauses in this Statute.*

1. If there be a corrupt Agreement at the time of lending the Money, then the Bond and all Assurances are void.

2. But if the Agreement be Good, and after he Receives more than he ought, then he forfeits the treble value. 1 *Sanders* 274. The Case was,

Debt on Bond 24 May, 19 Car. 2. Defendant prayed Oyer of the Condition, which was for 300*l*. to be paid 25 Febr. 20 Car. 2. and upon Oyer the Defendant pleads in Bar, *Quod post confessionem Scripti obligatorii pred.* See 10 May 20 Car. 2. The Plaintiff *corruptive*

*ceptit de Desi' 30 l. pro differendo diem soluco-*  
*nis pred. 300 l. pro uno anno Integro (videlt.)*  
*&c. Qd' est ultra ratam 6 l. per Cent. per Ann.*  
*contra formam Statuti per qd. script' obligatorium*  
*pred. vacuum devenit, & hoc, &c.* Plaintiff De-  
 murs, *per Cur'* the Plea is not good, for this  
 New Statute of Usury 12 Car. 2. saith, that  
 all Bonds, &c. for payment of any Money  
 for any Usury; and here the Bond is not for  
 payment of Money upon Usury, for it might  
 be for a just Debt, and the Usurious Con-  
 tract after shall not hurt it; but if it is punish-  
 able, and its forfeiture of treble value, *Per-*  
*al and Shaw.*

Usurious  
Contract  
after Bond,  
shall not a-  
void the  
Bond, but  
is punisha-  
ble by tre-  
ble value.

To the same purpose was *Radly and Ma-*  
*ing's Case, p. 25 Car. 2. B. R.* Condition  
 of the Bond was to pay by a certain day, De-  
 endant pleads the Statute 12 Car. 2. and said  
 that the Contract was Usurious; but *per Cur'*  
 being made after the Bond forfeited to re-  
 ceive Interest according to the Penalty which  
 was double the Principal, it doth not void  
 the Obligation that was good at first, but  
 only subjects the taker to other Penalties, and  
*judic' pro Quer.*

Information was on 12 Car. 2. c. 13. for  
 taking excessive Usury, that the Defendant  
 6 Nov. 20. Car. 2. lent to I. S. 20 l. till  
 the then next following, and that after-  
 wards, that is to say *ad finem termini pred.*  
 he took of the said I. S. *corruptive & extor-*  
*sive*

Usurious  
Ceceipt.

*Of Usury, and Usurious Contracts.*

Diversity.

Action  
grounded  
on the Loan  
and on the  
Receipt.

*five* for the Loan aforesaid 30 s. which was above the Rate by the Statute allowed. Upon not Guilty, Verdict was found against the Defendant: It was moved in arrest of Judgment, that the corrupt Agreement ought to be within the Statute at the making of the Contract, and not at the end of the Term as it is laid in the Information. *Per Twisden*, there is this difference: If the Plaintiff, who lends the Money, Contracts for more than *six per Cent.* all the Assurance is void; but if he does not Contract for more than the Statute allows, and afterwards will take more, the Assurance shall not be avoided, but the Party shall forfeit the treble Value: As if a Man when Money was at 8 l. *per Cent.* Lends Money, and takes Bond for the same, and then the Statute of 12 Car. 2. is made, and he will continue the old Interest upon that Bond, the Bond shall not be avoided by such Acceptance of Interest, but the Party shall forfeit the treble value by the Statute. *Raym.* 196. the King against *Allen*. This Case is Reported in 2 *Keb.* 690. And *per Cur.* the Court agreed, that the corrupt Agreement should be on the lending to make the treble forfeiture when the Action is grounded on the Loan; but being on Receipt the corrupt Receipt is sufficient, but not unless the Money be continued, or refusal to deliver up the Obligation without.



If the Contract be Usurious against the Statute, no Colour nor shew of Words will serve, but the Party may shew the same, and shall not be concluded nor estopped by any Deed, or by any other Matter whatsoever, for the Statute gives Averment in such Case. 5 Rep. 69. *Bartom's Case*.

*Statute Misrecited.*

Bond conditioned to pay 100 l. in four days after Demand. Defendant pleaded the Statute of, 12 Car. 2. c. 13. of Usury and all Bonds for greater Interest than 6 per Cent. from 1660 should be void, and the Defendant and the Plaintiff intestate agreed to pay above, and so void. Plaintiff Demurred, because in the Recital of the Statute of 12 Car. 2. the Word (*made*) is left out. *Per* The word (*made*) omitted make the Plea ill. *Cur.* this is an ill Plea, altering the sense of the Statute. 3 Keb. 618. *Gilmore and Isles*.

In *Love and Wootten's Case*. Cro, El. 245. the Defendant pleads the Statute of Usury made 6 Feb. 13 Eliz. whereas the Parliament began 2 Feb. 13 Eliz. and the Obligation was taken by Usury. Plaintiff replies, it was not made for Usury, *contra formam Statuti modo & forma predicti*. and at issue was found *pro Quer.* yet a Repleader was awarded after Verdict, for the Court held no judgment could be given for the Plaintiff, as well knowing that there was no such Statute. Repleader. Defendant

## Of Usury, and Usurious Contracts.

By particular conclusion on the Plea may be ill which on *contra formam Statuti* generally might be good.

Defendant in Debt pleads the Statute of Usury, reciting it to be at the Parliament held 25 April, 12 Car. 2. and concluded *void & corrupt. contra formam Stat. predicti* Plaintiff Demurs. *Per Cur.* by this particular Conclusion the plea is ill, tho' it be a general Statute; but had the Conclusion been *contra formam Statuti generally*, it had been well 3 Keb. 468. Palmer and Tayler.

The Form of Indictment upon 12 Car. 2. c. 13

*Juratores pro Dom' Rege super sacramenti: suum presentant quod cum quidam T. N. nuper de Paroch. Sti. &c. in Com. Mid. Labourer decimo quarto die Junij Anno regni Dom' nri' Caroli 2di Die grat. &c. vicesimo septimo apud Paroch' pred. in Com. pred. mutuo dedisset & accomodasset cuidam, R. I. summam octodecim solidor' Legalis Monet Anglie solvend. eid. T. N. super septimu' diem Novembr. extunc prox. sequen. An' superdicto idem T. N. postea scilicet die septimo die Septemb. An' supradict' apud Paroch' in Com' pred. illicito & corruptive recepit & habuit de prefat. R. I. pro differendo & dante diem solucon. pred. octodecim solidor' a predicto quarto decimo die Junij An' supradict' usq; predicto septimum diem Septem. an. supradict' summam viginti solidor' Legalis monete Anglie que quidem summa viginti solidor' per prefat T. N. sic prefertur recept. & habit. pro differendo & dante diem soluconis pred. octodecim solidor' a predicto 24 die Junij an. supradicto usq; predicto septimo*

in Septembr' an. supradict' excedit ratam sex  
librar' pro accomodatione centu' libraru' pro uno  
anno integro Contra formam statuti in hujusmo-  
di casu edit. & provis. nec non contra pacem dict.  
Dom' Reg' coronam & dignitatem suas.

Forfeiture.

Vide supra sub titulo. Explication of Acts of  
Parliament.

Information.

Information ought to be precisely alledged  
to draw a Man to be an Offender within the  
statute; therefore in an Information, if it be  
not alleadged *Quod corrupte agreeat' fuit*, it is  
not Good: But in a Special Verdict it need  
not be so precise, wherein all the Circum-  
stances are found, it being apparent to the  
Court to be Usurious it sufficeth, and it need  
not find, *quod corrupte agreeat' fuit*, Cro. Jac.  
17. Roberts and Tremaine. Penal Statutes,  
especially in Informations shall be taken strict-  
ly, and *in terminis* according to the purview  
of the Act, and therefore P. 20 Eliz. a Case  
was adjudged in the Exchequer, that where  
an Information was exhibited, and shews the  
Usurious Contract in certain, upon which it  
appears, that above the Sum of 10*l.* was re-  
ceived and received for the Loan of an 100*l.*  
against the form of the Statute, &c. and al-  
so it appears that this was corrupt, and that  
he

Difference  
between In-  
formation  
and Special  
Verdict.



he concluded *contra formam Statuti*, yet in as much as it is not expressly said that this was *per corruptam accomodationem*, according to the words of the penal Statute, the Information was adjudged insufficient. Cited in *Rep. 58. Dr. Foster's Case.*

Information in *Scaccar'* on a corrupt Bargain and Chevifance. It was moved in arrest of Judgment, that this Information was not good.

Certainty.

Information grounded on the Receipt.

Difference between pleading to avoid a Bond and an Information.

1. Because he doth not shew the certainty what the Bargain was, but generally *per viam corrupte*, &c. *sed non allocatus*, for so is the usual Course in the Exchequer, being grounded upon the Receipt: But it was agreed that in pleading to avoid a Bond or Assurance it ought to be particularly pleaded and shewed for the Party is privy to the manner of the Contract, but the Informer is not privy thereto, and therefore it sufficeth him to shew the Particulars upon the Evidence. *Cro. Jac. 44. Bedo and Sanderson.*

*In what Court.*

In the Exchequer.

It was moved that Information for Usury taking above 6l. *per Cent.* lies not in the Exchequer for Usury committed in *London*, by that Law of 6l. *per Cent.* No Suit is given in any Court in particular therefore may well be brought here, tho' if a particular Court had been named, it might have been otherwise. *Hard. 420.*

In Information on the Statute, *tam pro dom' Regr quam*, &c altho' the Attorney General enters a *non vult prosequi*, that is no Bar to the Informer for his Moiety, so if the Informer be non-suit, that is no Bar to the King. *Cro. Eliz. 138. Et 1 Leon 119. Stretton and Taylors Case.* The Queens Attorney entred a *non vult prosequi*, and that was pleaded in Bar against the Informer for the whole. *Per Cur.* it is no Bar against the Informer; so if the Queen be non suited.

Attorney  
General en-  
ters a *non  
vult prose-  
qui.*

Information on Statute, *H. 8.* tho' the Information was in the copulative giving and forbearing, and the Statute is in the Disjunctive, giving or forbearing, yet its good enough, *Per Manwood*, and one word enforceth the other. And,

The Information did not shew whose Money it was, and therefore it is not good. *Leon 95. Sir Woolstan Dixey's Case.*

Information  
ought to  
shew whose  
Money it  
was.

Upon the Statute of Usury, the Informer gave in Evidence, an Usurious Contract on a Bargain for Wares, the Information was exhibited for Loan of Money. *Per Cur'* the Evidence is not pursuant to the Issue, and does not maintain the Information. *Id. ibid.*

Evidence.

E

In

*In tempore 2. Eliz.* a Case was cited in *Sir Woolstan Dixey's Case.* 1 *Leon.* 95. Information that the Defendant had taken more than 10 *l.* in the hundred, but in the Information no Corruption in the Bargain was alledged, and so Judgment against the Informer.

No Corruption alledged in the Information

The Information did not shew whose Money it was, and therefore it was not good. 1 *Leon.* 95, 96. *Sir Woolstan Dixey's Case.*

The place where the corrupt Bargain was made ought to be shewed.

It was said by Clerk Baron, the place where the Defendant accepted excessive Interest ought to be shewed in the Information, but not the place where the Contract for the Loan or forbearance was made, as not being needful. But *per Ghent & Cur.* the place where the corrupt Bargain was made, ought to be certainly alledged. *Sir W. Dixey's Case.*

(For Forbearance) how far it extends.

Information on the Statute of Usury: It was excepted in arrest of Judgment, because Agreement *corrupte* to take Use for the time past, is not within the Statute, which is for giving day or Forbearance, which cannot be, the time being past. But *per Twisden and Windham*, the Statute is not for the forbearing, but for Forbearance, which may as well refer to time past.



or future. It being said, *corrupte agreatum*, the dating of the Bond will not avoid it, especially the Information being grounded on the Receipt, not on the Contract. 1 Keb. 744.

The Receipt of the Money is not said as 11 Rep. Dr. Foster's Case, to be *per viam corrupte accomodationis*, but it was averred that *corrupte accomodavit* the Money; its Averment's well enough on the whole Matter, the Information not being in particular on the corrupt receiving: 2 Keb. 763. the King against Page.

If an Information be exhibited upon the Statute of Usury, by which the Defendant is charged for the taking of 20 l. for the Loan and forbearing of 100 l. for a Year, there the Information is not good, if it be not alledged in it, that the said 20 l. was received by any corrupt or deceitful way or Means. 1 Leon. 208. Lancaster's Case. Upon Receipt, it must be laid to be received by corrupt ways and means.

Information is exhibited on the Statute of Usury, the Statute is, if any one take above 40 l. for the Loan of 100 l. for one Year, he shall forfeit the whole value of the Principal: Here there ought to be an Usurious Contract, for above 10 l. per Cent. and also there ought to be a taking. In what Case there ought to be an Usurious Contract, and a taking.

*Of Usury, and Usurious Contracts.*

Information must set forth the Quantity of the Interest received.

But if an Information be exhibited against an Usurer, and chargeth that he took more than 10*l.* in the hundred, without shewing how much, such Information is utterly Insufficient, for the Informer ought to set forth the quantity of the Interest received, and yet the same is not to be recovered on that Statute. 2 *Leon.* 39. *Martin Van Henbeck.*

Uncertain.

If the Informer setteth forth an Usurious Contract *cum quodam homine ignoto*, it is Insufficient. *Id. ibid. per Coke.*

Where it must be *qd. corrupte agreeat fuit.*

Defendant was indicted for Usurious Lending 20*s.* *ea Intention'* to receive 23*s.* within a Month, and that the Defendant did receive 3*s.* for the Loan of 20*s.* Per *Cur'* it is not good without saying *Quod corrupte agreeatum fuit, & ea de causa* it was quasht. 1 *Keb.* 629. the King against *Garth.*

Information by two.

Information upon an Usurious Contract by two. It is not sufficient to find a Contract by one; *aliter* where the Offences are several. *Trials per pais.* 269.

*Information within what time to be brought.*

By the Statute 21 Jac. every common Informer shall be Sworn before his Information be received, that the Fact was within the Year before the Information was exhibited, and within the County wherein it was exhibited.

By the Statute of 1 Eliz. No Informer can demand a Penalty upon a penal Statute, but by Information exhibited within the Year after the Offence. Cro. Jac. 365.

*Per Manwood* in Sir W. Dixey's Case, 1 Leon 95. the Offence ought to be within the Year, for if one makes a corrupt Bargain for this Year and ten Years after he takes excessive Usury, this is not within the Statute to inform upon it.

Information for Usury was exhibited in the Exchequer, and it was *pro acceptatione* 30 l. *pro accomodatione & datione diei soluc'* 500 l. &c. It was assigned for Error. 1. It is not expressly alledged that *Ken* (the Lender) *seu alius accomodavit*. 2. For that the Verdict was, *Quod K. acceptavit pro accomodatione & datione diei. &c.*



Non-suit  
not record-  
ed in Court  
and why.

Information was, that the Defendant took 8 s. & *unum modium tritici* for Interest for the Loan of a certain Sum of Money, where the 8 s. was according to 8 l. for the 100 l. and the Bushel of Wheat was more than the Statute allows; but the Record of *Nisi prius* was *unum modum tritici* for *modium*, upon which the Plaintiff at the Assises was Non-suit, but the Record in Court was good and right, and for that, if the Non-suit should be recorded in Court, and the Party put to a new Information, the Information would not lie for as much as the Year and Day is pass'd, and no default was in the Plaintiff, but only in the Clerk of the *Nisi prius*, ideo it was Recorded, but a *Venire facias de novo* was not awarded. 2 Rol. abr. 721.

*Where to be Laid, Venue.*

A Contract was made at W. in Staffordshire, and it was there agreed, that for an Horse and 2 Tun of Iron, the Plaintiff should have for them, and for forbearing the Money 50 l. whereas in truth they were but of the value of 40 l. and the Bond was made for the payment of 50 l. Defendant pleads Statute 13 El. to avoid the Bond; Plaintiff saith it was made upon good Consideration, *absq; hoc*, that it was made

made for such Usurious Contract. This Issue was tryed in *Com' Staff.* and good: For tho' the Bond was made in *London*, yet the Usury being alledged to be in *Staffordshire*, it shall be laid and tried there. 1 *Leon.* 148. *Kinnerfly and Smart.*

*Venire fac.* shall not be changed in Actions on penal Statutes, as in Debt upon the Statute of Usury on Affidavit if any Usurious Contract were it was made in such a County, but the Court would not change the *Venue*, for this is a debt in every County; but it seems there is no mischief in it, for by the Statute of, 21 *Jac* if the Action is not brought in the said County, the Defendant shall be found not Guilty. *Sid.* 287.

*Information Sur le Stat. del Usury.*

Lond. ff. **M**Emorand' quod Edwardus Burton, qui tam pro Dom' Rege quam pro seipso in hac parte sequitur dat Cur' Dom' Reg' hic intelligi quod post vicesimum nonum diem Septembris Anno Dom' 1660, scil' decimo nono die Martij Anno Regni Dom. Car' secundi nunc Regis Anglie, &c. Quarto decimo apud London præd. videl' in parochia beate Marie de Arcubus in warda de Cheape per viam & medium corrupte Barganie corrupte Agreatum fuit ini' quenda'

de, D. &c. & quendam C. D. & quod præd. C. D. accomodaret prefat. B. 800 l. legalis monet' Angl' a præd. decimo nono die Marcij usq; vicesimum diem Marcij jam prox' futur' Quodq; præd. B. daret eidem, C. pro differend' & dand' diem soluconis Anglice, forbearing and giving day of Payment, eidem B. predict' 800 l. a decimo die Marcij Anno quarto decimo suprad' usq; vicesimum diem Marcij jam prox' futur' vigint' libr' legalis monet' Anglie in manibus & quadragint' & octo libras super dictum vicesimum diem Marcij jam prox' futur' solvend' quodq; præd. C. in performacon' corrupte Barganie & agreementi præd' postea scil' præd' decimo die Marcij Anno Quarto decimo suprad' apud London' præd. in Paroch' & Warda præd' ancepit acceptavit & recepit de prefat' B M. præd' vigint' libras pro differendo & dando diem soluconis Anglice, forbearing and giving day of Payment, eidem B. M. præd. 800 l. a præd. decimo nono die Marcij Anno quarto decimo supradict' usq; vicesimum diem Marcij jam prox' futur' que quidem 20 l. & 48 l. excedunt & sunt ultra ratam sex librar' pro differendo Anglice forbearing 100 l. pro An. contra forma' Statuti in hujusmodi Casu Edit' & provis' quodq; præd. C D. vicesimo nono die Septembris Anno Dom. 1660. suprad' apud London' præd. in Paroch' & Warda præd' per viam & medium corrupte barganie super quodam al' Contract' pro accomoda-



modacone Anglice lending al' 800 l. sil' is  
 monet' de denar' ipsius I. D. prop. inter pre-  
 lat' B. M. & C. D. post pred' vicesimum  
 onum diem Septembris Anno 1660. supra-  
 dicto scilicet pred' decimo nono die Marcij An.  
 4 suprad' apud H. pred' in fact' accepit ac-  
 ceptavit & recepit de pefat' B. M. summam  
 4 l. pro differendo & dando diem soluconis  
 Anglice, forbearing and giving day of pay-  
 ment eidem B. M. predictar' 800 l. ult' men-  
 onat' a pred' 19 die Marcij per spatium' triu'  
 mensiu' & dimia' unius Anni tunc prox. se-  
 quend' attingen' & existen' ultra & supra  
 statam sex librar' pro differendo Anglice for-  
 bearing 100 l. per uno anno contra formam  
 Statuti in hujusmodi casu edit' & provis' per  
 quod pred' C. D. vigore Statuti predict' fo-  
 isfecit 2400 l. pro triplici valore 800 l.  
 primo superius menconat' per ipsum in forma  
 pred' contra formam Statuti pred' accomo-  
 dat' & abstent' ac al' 2400 l. pro Triplici va-  
 ore predict' al' 800 l. superius menconat'  
 per ipsum in forma pred' contra formam  
 Statuti pred' scilicet accomodat' & abstinent'  
 unde idem A. B. quitam, &c. per' quod ipse  
 medietat' seperal' forisfactur' predict' habere  
 possit juxta formam Statuti predict'. Et tam  
 pro Dom' Rege quam pro seipso per' advisa-  
 mentum Cur' Dom' Regis hic in premissis &  
 debet' legis processum, &c.

## Debt on Statute of Usury.

One Action cannot be grounded upon several Statutes, where several Penalties are given against several Persons; *contra* upon several Offences in the same Statute. 1 Keb. 360.

Lies within  
Inferiour  
Courts.

Action *tam quam* on the Statute of Usury was brought in the Court of Ely. Per Cur' it lies not there, or in other inferiour Courts. 1 Keb. 554. Gardner and Morefield: But only in the Courts at Westm'.

## Declar.

In Action on the Statute of Usury, on Contract to have 7 s. *per mensem pro 7*. It was moved in arrest of Judgment, because in the Declaration delivered to the Defendant, it was *corrupti*; but because the *postea* was *corrupte*, *non allocatur*, 1 Keb. 119.

Declar

## Declaration in Debt upon the Statute of Usury. 12 Car. 2.

**A.** B. qui tam pro Dom<sup>o</sup> Rege quam pro seipso in hac parte sequitur queritur de C. D. in custodia Mar<sup>is</sup> &c. de placito quod reddat dicto Dom<sup>o</sup> Regi & eid<sup>em</sup> A. quatuor mille & octingent<sup>as</sup> libras Legalis monete Anglie quas dicto Dom<sup>o</sup> Reg<sup>is</sup> & eid<sup>em</sup> A. debet & injuste detinet pro eo videlicet quod Cum post vicesimum nonum diem diem Septembris An<sup>no</sup> Dom<sup>ini</sup> millesimo sexcentesimo sexagesimo (scilicet) decimo nono die Martij An<sup>no</sup> Regni Dom<sup>ini</sup> Caroli secund<sup>i</sup> nunc Reg<sup>is</sup> Ang<sup>lie</sup> &c. quarto decimo apud Lond<sup>oniam</sup> videl<sup>icet</sup> in parochia beate Marie de Arcubus in Warda de Cheap London per viam & medium corrupte barganie corrupte agreeat<sup>us</sup> fuit inter quendam R. B. Armig<sup>erum</sup> & prefat<sup>um</sup> C. D. quod pred. C. D. accommodaret prefat<sup>um</sup> R. B. octingentas libras Legalis monete Anglie a predicto decimo nono die Martij Anno decimo quarto supradicto usq; 20 diem Martij jam prox<sup>imum</sup> futur<sup>um</sup> quodq; pred. R. B. daret eid<sup>em</sup> C. D. pro differendo & dando diem soluconis Angl<sup>ie</sup> for forbearing and giving day of payment, eid<sup>em</sup> R. B. pred. octingent<sup>as</sup> libras a pred. decimo nono die Martij An<sup>no</sup> Quarto decimo supradict<sup>um</sup> usq; pred. vicesimum diem Martij prox<sup>imum</sup> futur<sup>um</sup>. Et Idem A. qui tam, &c. in facto dicit



dicit quod pred. C. D. per viam & medium  
 corrupti barganie & agreeamenti pred. po-  
 stea scilt. predicti decimo nono die Martij  
 An. Quarto decimo supradicto apud Lond  
 pred in paroch & warda pred. accepit accep-  
 tavit & recepit de prefato R. B. pred. vi-  
 ginti libras pro differendo & dando diem so-  
 lucionis Angl' for forbearing and giving day  
 of payment, eid' R. B. pred. octingentas li-  
 bras a pred. decimo nono die Martij Anno  
 Quarto decimo supradicto usq; pred. vicesi-  
 mum diem Martij jam prox' futur' que qui-  
 dem viginti Libre per ipsum C. D. sic in  
 manibus recepti & pred. quadraginti & octo  
 libre super pred' vicesimum diem Martij jam  
 prox' futur' secundum formam corrupte bar-  
 ganie & agreeamenti pred. eid' C. D. sol-  
 vend' excedunt & sunt ultra & supra ratam  
 sex librarum pro differendo Anglice forbear-  
 ing cent' libr' pro uno Anno contra formam &  
 effectum Statuti illius in hujusmodo casu editi  
 & provis' per quod virtute Statuti illius actio  
 accrevit eid' A. qui tam, &c. ad exigenda  
 & habend' de prefat' C. D. pro dicto Dom  
 Rege & pro seipso duo mille & octingenta  
 libras parcel' pro triplici valore predictar  
 octingentar' librar' per prefat' C. D. contra  
 formam Statuti pred. sic ut prefertur accom-  
 dat' & absient' Anglice forbourn. Cumque  
 etiam pred. C. D. postea & post pred. 29  
 diem Septembr' An. Dom. 1660, supradicti  
 (videl') 5 die Julij An. Quarto decimo su-  
 pradicti

*radiſto apud Lond' pred. in paroch' & war-*  
*a pred. per viam & medi' corrupte barganie*  
*per quodam al' contract' pro Accomodatione*  
*Anglice Lending al' octingent' libras ſimilis*  
*monete de denarijs ipſius C. D. proprijs in-*  
*ter prefat' R.B. & pred. C. D. poſt pred.*  
*tricesimum nonum diem Septembr' An. Dom.*  
*1660, ſupradiſto videl' 5 die Julij. An.*  
*Quarto decimo ſupradiſto apud Lond' pred.*  
*in paroch' & Warda pred. f. & accepit accep-*  
*avit & recepit de predicto R.B. ſummam tri-*  
*centa & quatuor librar' Legal' monete Anglie*  
*pro differendo & dando diem ſoluconis Angl'*  
*for the forbearing and giving day of pay-*  
*ment, eid' R. B. predict' octingent' libras*  
*ut mentionat' a predicto decimo nono die*  
*Martij per ſpatium trium menſium & di-*  
*ſidia' unius menſis tunc prox' ſequen' attingen'*  
*& exiſten' ultra & ſupra ratam ſex librar'*  
*pro differendo Angl' forbearing, cent' libras*  
*pro uno Anno contra formam Statuti in huius-*  
*modi caſu edit' & proviſ. per quod & vigore*  
*Statuti illius actio accrevit eid' A. qui tam, &c.*  
*ad exigend' & habend' de prefat' C. D. pro*  
*dicto Dom' Rege & proſeipſo predict' duo mille*  
*& Quadringent' libras predictar' quatuor mil-*  
*lium & octingentarum librarum reſid' pro tri-*  
*plici valore predictarum octingentarum libra-*  
*rum ut mentionat' per prefat' C. D. contra*  
*formam Statuti pred. ſic ut prefertur accomo-*  
*dat' & abſtent' Anglice forbourn, pred. tamen*  
*C. D. licet ſepius requiſit', &c. pred quatuor*  
*mille*

mille & octingent' libras dicto Dom' Regi & eid' A. qui tam, &c. nondum solvit sed illa dicto Dom' Regi & eid' A. hucusq; solvere omnino contradixit & adhuc contradic' ad damnum ipsius A. qui tam, &c. Cent' libr' Et inde produc' sectam, &c.

### Barr' al Obligation per Stat' de Usury.

Lond' W. **A.** B. quer' de C. D. & de clar' sur' obligation de 20 lib' dat' 25 Marci' An. 15 Car. 2. Regis.

Defendant prays Oyer of the Condition which is, that if W. E. and the Defendant should pay to the Plaintiff 10 l. super 25 diem Marcij tunc prox', that than the obligation should be void.

*Quibus Lectis, &c. actionem habere non debet Quia dicit quod ante confectionem Scripti Obligatorij pred. scilicet pd. 20 die Martij An. 25 supradicti apud Lond' pred. in paroch' de &c. corrupte agreeat' fuit inter prefat' quer' & prefat' (obligors) quod pred. quer' accomoderet eisdem (obligors) viginti libras quodque pro expectatione inde per tempus infra scriptum eisdem (obligors) solverent & darent eidem quer' 10 l. legatis, &c. modo & forma sequenti quoniam videlicet 10 l. Legalis, &c. ad vel super*



diem Sept. tunc prox' sequen' al' 10 l. Le-  
 is, &c. amplius ad vel super 25 diem  
 Martij An. Dom. 1664, & al' decem libras  
 gal' &c. ad vel super 29 diem Septembr'  
 i ad tunc foret & adhuc erit An. Dom.  
 1664, quodque pro securitate soluconis mo-  
 te Principal' & Interesse pred. in toto se-  
 ingen' ad 30 l. prefat' quer' in forma pre-  
 sta iidem (obligors) conjunctim & divisim  
 venirent tent' & obligat' prefat' Quer' in  
 bus sepealibus Scriptis obligatoriis videl'  
 eorum de penalitate 20 l. sub Condicone so-  
 lutione pd. prime 10 l. pd. 30 l. parcel' prefat'  
 quer' super 29 diem Sept' tunc prox' sequen'  
 al' eorum de simili penalitate 20 l. condiconat'  
 pro solucone aliarum 10 l. pred. 30 l. librarum  
 parcel' super pred' 25 diem Martij An.  
 Dom. 1664, supradict' & tertium eorum-  
 dem scriptorum obligatoriorum de simili pena-  
 litate Condiconat' pro solucone aliarum 10 l.  
 pred. 30 l. resid' prefat' Quer' super pred.  
 diem Sept' An. Dom. 1664 supradicto.  
 idem def' ulterius dicit quod pred. quer'  
 prosecutione Angl' persuant corrupti a-  
 greeamenti pred' postea scil' pred. 25 die  
 Marcij Anno decimo quinto supradict' apud,  
 &c. accomodavit predict' (obligors) pred.  
 10 l. quodque postea scil' eod' 25 die Marcij  
 An. Decimo quinto supradict' apud &c. iidem  
 (obligors) in plenar' complement' & perfor-  
 macion' corrupti agreeamenti pred. sigillis suis  
 sigillaverunt & ut factum deliberaverunt tria  
 paralia scripta obligatoria prefat' quer' de  
 pred.

pred. penalitate 20 l. per unum quorum ij  
 (obligors) conjunctim & divisim devenerunt  
 tent' & obligat' prefat' quer' in predicta p  
 nalitate 20 l. condiconat' pro solucon' 10  
 super red. 29 diem Sept. tunc prox sequ  
 & un' al' scriptum obligatorium de pred' pen  
 litate 20 l. per quod iidem (obligors) con  
 junctim & divisim devenerunt tent' & obli  
 gat' prefat' quer' in pred. penalitat' 20 l. an  
 plius condiconat' pro solucone aliarum 10  
 eid' quer' super pred. 25 diem Marcij An  
 Dom. 1664, & un' al' scri tum obligat'  
 penalitate 20 l. per quod ijd. (obligors) con  
 junctim & divisim devenerunt tent' et obli  
 gat' prefat' Quer' in pred. penalitate 20  
 amplius condiconat' pro solucon' aliarum 10  
 existen' resid' pd. 30 l sup' pd. 29 diem Septem  
 qui ad tunc foret et adhuc erit An. Dom. 1664  
 Et pred def' ulterius dicit quod pred. 10  
 pro expectatione 20 l. per tempus pred' in fo  
 ma red. excedunt ratam sex librarum  
 centum libris pro uno anno contra forma  
 Statut' in hujusmodi casu nuder edit' et pr  
 vis'. Et idem Def' ulterius dicit quod  
 scriptum obligatorium per prefat' quer' mo  
 hic in Curia prolat' et predict' scriptum oblig  
 torium in isto placito superius meconat' prefat'  
 quer' per eosdem (obligors) fore dat' ut prefat'  
 tur sunt unum et idem scriptum obligatorium  
 et non aliud neque diversum per quod vige  
 Statuti pred. scriptum obligatorium hoc  
 Cur' prolat' sic in performance agreeamen  
 predicti

*predicti vacuum et nullius vigoris seu effectus in Lege existit. Et hoc, &c. unde, &c.*

*Repl' precludi non debet quia dicit quod scriptum obligatorium pred. factum fuit prefat' (Quer) pro vere & justo debito per prefat' (obligors) debit' absq; hoc quod corruptive agreeat' fuit inter ipsum quer' & prefat' (obligors) contra formam Statuti predicto modo & forma prout Def' superius inde placitando allegavit Et hoc, &c. unde.*

Repl' quod obligacio dat' fuit justo debito & traverse le corrupt agreement-

*Et pred. Def' ut prius dicit quod corruptive agreeat' fuit int' pred. quer' & prefat' (obligors) contra formam Stat' predicti modo & forma prout ipse idem Def' superius inde placitando allgavit. Et de hoc ponit se super patriam Et pred. quer' similiter & Ideo ven', &c.*

Rejoind & issue sur le Traverse.

### Judgment.

Debt on the Statute of 37 H.8. of Usury, the Writ was, that he *corruptive* lent 40 l. &c. against the form of the Statute, and that he such a day lent 20 l. &c. against the Statute, but doth not say *corruptive*. Defendant pleaded *non debet*, and found against him. *Per Cur.* he shall have Judgment for that part where he saith *corruptive*, for being several Sums, it is in the nature of two several Actions; and tho' it be void



as to the one, its well as to the other.  
*Cro. Jac. 104. Woody's Case.*

*Tam quam,*  
 &c. not  
 within the  
 Statute 27  
*El. c. 4.*

Debt on the Statute of Usury, a Superfedeas was granted to a Writ of Error, to remove Action of Debt *tam quam*, on the Statute of Usury, because not within the Statute of 27 *Eliz. c. 4.* to be removed into the Exchequer-Chamber, because the King is Party, and to have part of the Debt; but in an Action of *Scandalum Magnatum* he is not. *1 Keb. 828. Whitton and Preston.*

Prohibition  
 to the  
 Council of  
*York,*

Debt was brought by English Bill before the Council of York upon Bond, to which the Statute of Usury was pleaded. *Per Cur'* they have not power to hold Plea thereof, and so a Prohibition was granted. *Pal. 527.*

### *Pleading the Statute of Usury.*

*To what Security the Statute may be pleaded or not.*

**T**O a *Scire Facias* on a Judgment entered 13 *Car. 2.* the Defendant pleads the New Statute of 12 *Car. 2.* *quod post confectionem* of the said Statute (*viz.*) 3 June, 13 *Car. 2.* *corrupte agere* *atum fuit*, that the Plaintiff should len

to the Defendant 100 l. and for the for-  
bearance of this *pro tempore in frascript*,  
the Defendant should pay 120 l. to the  
Plaintiff in such manner (*scilicet*) 40 l. on  
the 20th day of January, and 20 of July  
by equal Portions *Annuatim prox' sequen'*  
*10 diem tunc instant' mensis Julij*, until the  
20 l. be paid, which exceeds the rate of  
1 l. per Cent. for new Security, whereas  
he gave new Security of 200 l. per Bond,  
and also acknowledged the said Judgment,  
and so concludes the Judgment void by  
the Statute aforesaid: The Plaintiff Demurs.

*Per Cur.* the Plea is ill, for such Plea may  
not be pleaded after Judgment, but ought  
to be offered to the Action before Judg-  
ment confess'd, and Judgments shall not be  
voided by such Surmise, especially in as  
much as by the Judgment, the first Con-  
tract which is supposed to be Usurious is  
determined. *Sid. 182. Rowe and Bellasis.*  
*pro. Car. 588. Middleton and Hall. Twis-*  
*sen* said, this Contract was not Usurious,  
but is a purchase of an Annuity for three  
years. *Vide 5 Rep. 69. b.*

May not be  
pleaded to  
a Judgment.

But the Remedy in this Case is by *And'*  
*Quer'* 9.

*Audita Querela* was brought, for that  
the Plaintiff was in Execution in Debt upon  
Bond, and alledgeth it was made for Ufu-  
ry contrary to the Statute of 13 *Eliz.* and

*Aud. Quer'*  
on Executi-  
on.

If a Man be  
condemned  
by *nihil di-*  
*cit*, he shall  
not have  
*Audita*  
*Querela*, ali-  
ter whereby  
default, for  
there he  
had no day  
in Court to  
plead.

because it did appear to the Court, that he was condemned upon a *Nihil dicit* after he had made an Attorney, and had appeared, so that he might have pleaded this Plea in avoidance of the Obligation, and then did not plead it; the *Aud' Quer'* was disallowed by the whole Court, for *Aud' Quer'* doth not lie after Judgment upon a thing he might have pleaded before, but when he is condemned by default and had no day in Court to plead it, there lies. *Cro. Eliz.* 25. *Fisher and Banks.*

J. W. brought an *Audita Querela* upon the Statute of Usury to be relieved in making void a Judgment given upon a Bond where he hath pleaded, that it was not his Deed, and it was disallowed, and Judgment thereon as followeth.

*Et super hoc premissis pred. visis & per J. ciarcios hic plenius Intellectis videtur sticiarijs hic quod pred. breve de Audita Querela materiaque in ead' context' mi sufficiens in Lege existit ad pred' R. executionem pred' habend' retardand' considerat' est quod pred' I. W. nil cap pro breve suum de Audita Querela Et. pred. R. prosecut' pro executione &c.*



The Defendant was indicted for Usurious lending 20 s. *ea Intentione*, to receive 3 s. within a Month, and that the Defendant did receive 3 d. for the Loan of 20 s. which *per Cur.* is not good without saying *Quod corrupte agreeat fuit & ea causa* it was quasht. 1 Keb. 624. the King against Garth.

*Corrupte agreeat. fuit.*

### *Pleading as to the Agreement.*

In an Action of Covenant on Articles it appears, that 500 l. was lent, and the Articles were dated 8 March, to be paid at such a time, and in the mean time to pay 5 l. half-yearly from November before; upon this the other Demurs, and it was renewed for cause that it appears by the Declaration that the Contract is Usurious; but on the other side it was said, he ought to plead *quod corrupte agreeatum fuit, &c.* to the intent that an answer may be given to it: But upon reading the Articles it was, whereas Money was lent, which may be in November, or before; and Judgment *pro Quer. Sid. 285. Dando and Currer.* Upon Information, where several Contracts upon Usury, being alledged, issue was joined, whether it was *corrupte agreeatum modo et forma prout.* It was resolved

*Corrupte agreeatum.*

Where the  
agreement  
ought to be  
traversed.

by all the Justices of England to be an ill  
Issue, for he ought to have traversed the  
Agreements, because they were several.  
*Paramour and Robinson's Case, B. R. cited  
in Heath and Dauncleys Case. Cro. Jac. 544.*

Defendant pleaded the Statute of Usury, alledging that *agreeatum fuit*, that the Plaintiff should have so much Money *pro donatione diei solacionis*. Plaintiff traversed *absq; hoc agreeat. fuit*, and found *pro Quer*. It was moved in arrest of Judgment, that the word (*corrupte*) was not pleaded in Bar. Resolved that the Bar was made good by the Replication, and the Declaration being good, Judgment *pro Quer*. *Moor, No. 624. Rogers and Jackson.* Defendant pleaded *quod corrupte agreeat. fuit et quod quer' corrupte recepit*, and an Issue on them found for the Defendant on both and good, for the one is not material. *Moor, No. 750. Johnson and Clerk.*

Bar made  
good by the  
Replication.

*Ellington* Bargains and Sells, and Mortgage his Land to *M.* for the payment of 100 *l.* to be paid an Year after, and that the Bargainee should have the Profits, the Bargainor enters as upon a void Sale, because of the Statute of Usury, for by the proviso, he is to have 100 *l.* and 10 *l.* for the forbearance, and by the Law is to have the Profit which amounted to 12 *l.* per An. The Bargainor

gaineer to avoid the Usury, pleaded an Agreement by word before the sealing of the Indenture that *Ellington* should have and receive the Profits, and not the Plaintiff. And the Question was, if the Bargaineer might plead this verbal Agreement for the avoiding the Deed which doth suppose the contrary. *Per Cur.* he may plead the verbal Agreement; but they all agreed, that when a Deed is perfected and delivered as his Deed, that then no verbal Agreement afterwards may be pleaded in destruction thereof, as is 1 H. 7. 28. 28 H. 8. 25. *Dier* 16. 5 Rep. *Rutland's Case*, and *Cheyney's Case*. 6 Rep. But when the Agreement is parcel of the Original Contract, as here it is, it may be pleaded; but had it been expressed in the Deed, that the Bargaineer should have the Profits, and that it was delivered accordingly, then no Agreement or Assignment of the Profits could now avoid it, and Judgment *pro Quer.* that he may well plead the Agreement. 1 *Brownl.* 191. *Burlacy versus Ellington.*

Where verbal agreement may be pleaded and when.

In Action of Covenant on Articles whereby the Parties, 8 March on Loan of 500 l. for 7 Years from 12 No. before paying 15 l. half-yearly for Interest, the first payment to be on Pentecost next, and 11 No. and because thus he is to have 7



If any corrupt agreement be, it must be pleaded.

Years Interest for six Years and an half Loan, and thus whether it be taken for an half Years payment, or for 7 Years *secundum ratam*, therefore it being an Usurious Contract, *Jones* for the Defendant Demurred, and prayed the Judgment of the Court; but *per Cur.* the Articles being, that whereas the Plaintiff hath lent to the Defendant from 12 *Novemb.* last, therefore if any corrupt Agreement were it must be pleaded as this Case is. 2 *Keb.* 35. *Dando and Currie.* *Sid.* 285.

Reg.

It is laid down as a Rule in *Burton's* Case, 5 *Rep.*

If in truth the Contract be Usurious against the Statute, no colour nor shew of Words will serve, but the Party may shew the same, and shall not be concluded nor Estopped by any Deed, or any other Matter whatsoever, for the Statute giveth Averment in such Case. 5 *Rep.* 69. *b.*

Information against *W.* for that he, the 30 *May* *per viam*, &c. received 40*s.* *pro differendo diem soluconis* 25 *l.* a 27 *July* ad 30 *May*, *contra formam Statuti.* *W.* was found guilty. Moved in arrest of Judgment, that there was not any Money lent, *viz.* 25 *l.* and if it doth appear the taking is after the Loan, and no corrupt Agreement

ment is supposed to be before or at the time of the Loan; Yet *per Cur'* Judgment against *W.* for if it is not well laid to give Judgment against him upon the Statute, of 12 *Car.2. c. 13.* to pay treble the Money Judgment at Common Law, upon corrupt taking. yet it is found that by corrupt Agreement he took so much, and for this Judgment was given against him at Common Law, (*viz.*) Fine and Imprisonment. *Sid. 21. Le Roy and Walker.*

Debt on Bond dated 12 *July, 10 Car. 1.* With Condition for payment of 58 *l.* at the end of six Months. Defendant pleads the Statute of 21 *Jac.* of Usury. Plaintiff replies, that he lent the 50 *l.* for a Year, and that the Defendant should pay 8 *l.* for the forbearance for a Year, and that the Plaintiff should not demand it till the end of the Year, and by the Scriveners mistake it was made payable at the half Years end, and he not knowing thereof accepts the Bond. Defendant rejoins, that the lending thereof was only for half a Year, and that he was to pay for it 8 *l.* for that time, and traverseth that upon the said 12 *July,* it was agreed the Loan should be for one entire Year, or that he should forbear it for one Year. Plaintiff Demurs. 1. *per Cur.* the Bar is ill, because he doth not say *corruptive agreeatum fuit.*

2. He

Allegation  
against the  
words of  
the Condi-  
tion.

2. He may make such Allegation, tho' it be against the words of the Condition for it is the shewing the true agreement that no Interest was paid by the said Agreement, but such as stood with the Law.

Traverse  
Agreement.

3. The Rejoynder is ill, because there he makes the day to be parcel of the Issue which ought not to be, but he ought to have traversed the Agreement only. *Cr. Car. 501. Nevison and Whitly. Jones 396.*

Nomine p<sup>re</sup>-  
na.

Debt upon Bill. Plaintiff declares that the Defendant 20 April 1633, by his Bill became Bound to him in 7 l. to be paid 20 April 1634. And if default of payment was, he granted to pay 3 s. 4 d. for every Month it should be in Arrear. Defendant pleads, that upon the lending of the 7 l. to be paid at the end of the Year it was *corrupte* agreed to pay 3 s. 4 d. *ante*; had it been well pleaded it had been good for it is not averred that the Agreement was to pay 3 s. 4 d. for every Month *pro Lucro Interesse & diem dando soluconem* Jones, 409. Swales and Bateman.



Debt on Bond. Defendant pleaded the Statute of Usury in Bar, that there was an Agreement between the Plaintiff and him, that the Plaintiff should deliver Wares to him of the value of 20 *l.* and that the Defendant should pay to him for the same within six Months 34 *l.* upon which they were at Issue, and found against the Defendant. It was moved in arrest of Judgment, because it was not alledged that the Obligation was made for the payment of this Money, it was no Plea or Issue. *Sed* One shall not take advantage of his own mispleading. *non allocatur*, for he shall not take Advantage of his own mispleading, and Judgment was given *pro Quer' Cro. Eliz. 104. Peterson's Case.*

### *Pleading to avoid the Bond or Deed.*

It is a Rule in 5 *Rep. Whelpdale's Case*, when an Obligation or other deed is by Act of Parliament enacted to be void, the Party who is bound by it, cannot plead *non est factum*, but in Construction of Law the Deed is to be avoided by the Party, who is bound by it by special Pleading of the Matter, taking Advantage of the Act of Parliament, for tho' the Act makes the Obligation or other Writing void, yet the Law *tacite* requires order and manner, which the Obligee ought to persue, as Flead the Special Matter. where

where a Bond is made to the Sheriff against  
 23 *H. 6. c. 10.* or against the Statute  
 13 *Eliz. c. 8.* Of Usury, the Obligee ought  
 to plead the Special Matter, with conclu-  
 sion of Judgment *si actio.*

Stranger  
 not to plead  
 the Statute  
 of Usury in  
 avoidance  
 of a Con-  
 veyance.

A Stranger cannot plead Usury in avoy-  
 dance of a Conveyance. *A.* Mortgaged  
 Lands to *B.* upon an Usurious Contract  
 for 100*l.* and before the day of payment  
*B.* is ousted by *C.* against whom *C.* brings  
 an Action. *C.* cannot plead the Statute of  
 Usury, for he hath not Title. 1 *Leon.*  
 307.

In *Dorman's* Case it was adjudged, that  
 where a Man borrows Money upon an  
 Usurious Contract, and a Surety is Bound  
 with him, and the Principal gives secu-  
 rity to the Surety by collateral Obligation;  
 and the Surety is arrested, he may take ad-  
 vantage of the Counterbond, notwithstan-  
 ding that the Principal Obligation was  
 void by the Statute of Usury, cited 2  
*Brownl.* 162. But this Case is, I conceive  
 mistaken for *Dawkam's* Case hereafter more  
 fully argued. *Cro. El.* 642.

Condition to save harmless the Plaintiff from an Obligation wherein the Plaintiff, as Surety for the Defendant, was bound to J. S. to pay 100*l.* Defendant pleads that the said Obligation to J. S. was upon Usurious Contract, and pleads the Statute of Usury, and *sic non damnificatus*, Plaintiff Demurs. *Per Cur'* It is no Plea, for he ought to save his Surety harmless, because the Surety by Intendment cannot know of the corrupt Contract to plead it in avoidance of the Bond, therefore the Principal ought to take care thereof, tho' *Tanfeild* objected, and said the Plea is good; otherwise the Statute would be defrauded, for by a compact the Assurer would sue the Surety, and he should pay him, and have his remedy upon his Counter-bond. *Cro. Eliz.* 588 *Robinson* and *May*.

Counter-bond to save harmless, Defendant cannot plead the Statute of Usury and *sic non damnificatus*.

### *Ellis* against *Warnes*.

To a Bond of 200*l.* Defendant pleads the Statute of 27 *H.8.* and 13 *Eliz.* of Usury, and shews he was indebted to one *Alder* in 100*l.* and agreed with him for the forbearance of that 100*l.* that he would give to him 30*l.* and make a Bond to *Alder* of 60*l.* for the payment of that 30*l.* and for payment of the 100*l.* Principal, he and *Alder* entred into this Bond of 200*l.* to



Corruption  
between  
the Debtor  
and the  
Surety, to  
which the  
Debtee is  
not privy  
hurts not.

200*l.* to the Plaintiff, and so being made upon this Usurious Contract is void, the Plaintiff saith *Alder* was justly indebted to him in 100*l.* and that for the payment of this just Debt of 100*l.* he and the Defendant entred this Bond to the Plaintiff, he not knowing nor privy to any corrupt Agreement between the Defendant and *Alder*, & *hoc*, &c. *Warnes* the Defend' Demurs. Adjudged *pro Quer'* for it is not Usury in the Plaintiff, but only between *Warnes* and *Alder*, to which the Plaintiff not being privy shall not be prejudiced; and tho' the Statute shall be taken strongly to suppress Usury, yet it ought to be between the Parties that use Corruption, and not punish the Innocent, as the Plaintiff is: But if no Debt had been due to the Plaintiff before, then clearly it had been Usury in the Plaintiff; for there was no Lawful Cause to make a Bond to him, but only to Countenance the Corruption between *Warnes* and *Alder*; and if this Plea should be good, then every Man may be defrauded of his due Debt, for commonly the Creditor demands a Surety, and it is confessed by the Demurrer, that this Bond was made to the Plaintiff for a due Debt, and that he was not privy to any corrupt Agreement between them; the Bond is good. It was objected, that the Replication was not good, because he doth not deny

deny the corrupt Agreement alledged in the Bar; but by *nient dedire* confesseth it; and altho' he were not privy to the corrupt Agreement it were void, for otherwise it would be a practice for every Usurer to void the Statutes; for he would always be justly indebted in the Principal Sum, and would contract for the Usury Money in his own name, and take the Assurance of it to himself; but to be assured of the Principal he would cause the Bond to be made to one to whom he was justly indebted, and who should not know of the Bargain between them: Tho' this may be said, that it is a means to defraud the Statute on one side, yet it may be a greater mischief to true Creditors: And it was said, the Plaintiff could not traverse the Plea of the Debt, for he cannot traverse a thing that does not lie in his Conscience, and to which he is not Privy. *Yelv. 47. Ellis and Warnes. Cro. Jac. 32.*

The Party  
damned  
by the Con-  
tract to be  
privy to the  
Contract.

In debt on Bond, the Case was, *Basset* was Bound with *Prowse* as his Surety to one *Preston*, in 500*l.* and that was upon an Usurious Contract against the Statute, and *Prowse* was bound to the Plaintiff in a Bond as a Counter-bond to save the Plaintiff harmless of the said Bond of 500*l.* *Basset*, the Plaintiff, is sued by *Preston* upon the said Bond, and *sic damnificat'*, and there.

Counter-  
bond.

thereupon *Basset* sued *B.* upon the Counter-bond, who pleaded against *Basset* the Statute of Usury, pretending that all Assurances depending upon such Usurious Contracts are void. *Per Wray* Ch. Just. it is no Plea. The Statute is, that all Bonds, or collateral Assurances made for the payment of Money lent upon Usury shall be void; but the Bond, here upon which the Action is brought, was not for payment of the Money lent, but for the indemnity of the Surety. 2 *Leon.* No. 200. *Basset* and *Prowse's* Case.

Counter-  
bond.

But *Potkin's* Case, in 3 *Leon.* was Debt on Bond by *Potkins.* Defendant pleads, he himself borrowed of one *Watson* a certain Sum of Money, paying for the forbearance thereof excessive Usury, and that the Plaintiff was bound with the Defendant to the said *Watson* for the payment thereof, and that he himself by this Obligation, upon which the Action is brought, was bound to the said Plaintiff to save him harmless against the said *Watson*, &c. and because that this was a Counter-bond for payment of excessive Usury, &c. *Per Curiam* the same is a good Bar, for the Plaintiff when he was impleaded upon the Principal Bond, might have discharged himself upon this matter, and therefore his Laches shall turn to his prejudice; and Issue was joined upon



upon the excessive Usury. P. 63. Potkins Case.

*Audita Querela* to avoid a Statute upon the Statute of Usury, Defendant pleaded, *Quod respondere non debet*, because he was outlaw'd at the Suit of T. M. by the name of, &c. and it was hereupon demurred; because this Outlawry in this Suit (which is only by way of discharge), and to recover nothing is not pleadable; but it was adjudged for the Defendant after Argument that the Plaintiff should take nothing by this Writ. For a Person Outlaw'd is not receivable to sue in any Court unless it be to reverse his own Outlawry. And where the Action is *ad Lucrandum*, there ought to be ability in the Person. And it is all one to gain by way of discharge, as by way of perquisition. *Cro. Jac. 425. Peirs Griffith vers. Hugh Middleton.*

*Audita Querela*, to avoid a Statute, and Outlawry pleaded.

*Pardon Pleaded.*

Pardon. If the King pardon the Usury, yet the Bond is void. *Hobt. 168.*

In Action on the Statute of Usury, general Pardon would not be allowed in arrest of Judgment, unless it were pleaded before, 1 *Keb. 119.*

Pleading.

A Man cannot plead a Statute in avoidance of a Judgment. *Scire Facias* was brought on a Judgment of 240 *l.* Defendant pleaded, he borrowed of the Plaintiff 100 *l.* and contracted with him to give the Defendant 20 *l.* for the Loan for a Year, and for the payment of that 120 *l.* the Plaintiff would have the Defendant to confess that Judgment, and pleaded the Statute of Usury to avoid it. It is not any Plea; the Statute of 13 *El.* is, all Bonds and Contracts, and Assurances, Collateral, &c. shall be void; but here this Judgment cannot be termed an Assurance, nor be avoided by such a Surmise. And if there had been any such matter, the Defendant might have pleaded it on the Action brought, and not have suffered a Judgment. And altho' it may be a practice to avoid the Statute, yet it shall rather be tolerated, than to avoid Judgments on such Suggestions. *Cro. El.* 588. *Middleton and Hill.*

*Secundum  
ratam of  
10 *l.* per  
Cent. and  
saith not  
what it is.*

On Pleading of 40 *s.* for Interest of 20 *l.* and doth not say what the Interest of 20 *l.* is, but saith *secundum ratam* of 10 *l.* per Cent. yet good, for the Court knows well, that it is 40 *s.* for 20 *l.* for a Year, and Error was brought for this reason, but Judgment affirmed. *Cro. Jac.* 378. *Williamson and Hunt.*

Debt

Debt on Bond, dated 24 May, 19 Car. Pleading Usurious Receipt.  
 2. Defendant prays Oyer of the Condition, which is for the payment of 300 l. upon the 20 Febr. 20 Car. 2. Defendant pleads in Bar upon the Oyer, *quod post confectionem Scripti Obligatorii pred. scil' 10 die Maij 20. Car. 2.* The Plaintiff *corruptive* received of the Defendant 30 l. *pro differendo diem solutionis pred. 300 l. pro uno Anno Integro, viz. from the 25th day of Febr. pred. An. vicesimo, until the 25th Febr. An. 21.* which is *ultra ratam, 6 l. per Cent.* for a Year, which is *contra formam Statuti, per quod pred. Scriptum obligation' vacuum devenit.* Plaintiff Demurs. Per Cur' the Plea is not good, for the new Statute of Usury saith, that all Bonds, whereupon more shall be reserved than 6 l. per Cent. shall be void, so that that Bond that shall be void by this Clause, ought to be for payment of Money upon Usury, but here the Bond is not made for payment of Money upon Usury, but for ought it appears, it is for payment of a just Debt, and so the Bond was good when it was made, and then an Usurious Contract after doth not make the Bond void; but by such Usurious Contract and Receipt, the Plaintiff hath forfeited the treble value. Forfeiture of treble Value. Sanders 254. Ferrall and Shaan.



*Statute mispleaded.*

Defendant pleads the Statute of Usury made 6 Febr. 13 Eliz. whereas the Parliament began the 2 Febr. 13 Eliz. and that the Obligation was taken by Usury: Plaintiff replies that it was made by Usury, *contra formam Stat. modo & forma pred.* Repleader. and at issue it was found *pro Quer'* Yet a repleader was awarded after Verdict, for the Court held no Judgment could be given for the Plaintiff as well knowing there was no such Statute. *Cro. El. 245. Love and Wootton.*

In Debt, the Defendant pleads the Statute of Usury, reciting it to be at the Parliament held, 25 Apr. 17 Car. 2. and concludes *sic void, and corrupt contra formam Statuti predicti*, to which the Plaintiff demurred. *Per Cur.* By this particular Conclusion, the Plea is ill, tho' it be a general Statute, but had the conclusion been *contra formam Statuti* generally, it were well enough, and Judgment *pro Quer'*. 2 Keb. 468. *Palmer and Taylor.*

*Pleading, another Information depending.*

Debt *tam quam* on the Statute of Usury. Defendant pleads *ante Exhibitionem bille*, R. sued the Defendant for the same Matter (*viz.*) the first day of Michaelmas Term, and being both the same day, and no priority appearing on reference to Mr. *Livsey* Secondary, *Simson* prayed Judgment, *pro Quer'* and by *Hales* Chief Justice, it not appearing on the Declaration what day the Plaintiffs Bill was exhibited, the Defendant should have shewed what day it was, as on the Statute of Limitations *ante exhibitionem bille* generally is no Plea; especially it appearing, that they were both exhibited the same day, and the King hath Election: Judgment *pro Quer'* 3 Keb. 491. This Case was moved before, 3 Keb. 426. its pleaded after imparlance in Bar to which the Plaintiff demurred generally. *Per Cur'*, being popular it is a good Plea in Bar. And not like a Civil Action twice brought, which is only in abatement: Also being both the same Term and no day pleaded, which ought to be Sworn, in which Case there would be Priority: But being pleaded *ante exhibitionem bille* (*viz.*) the first day of the Term, its a good plea in Bar, and the Court will examine the Record of the Bail, and of the

*Ante exhibitionem bille*, how to be pleaded.

In a popular Action its a good Plea in Bar, and not in abatement.

coming in of the several Informations, and it might be pleaded by fraud, if exhibited by the same Party, or the demurrer shewing, specially the Cause; but the general Demurrer confesseth it was *ante*, and *per Cur'* it ought to be quasht if later. *Hutchins* and *Thomas*. This Case is reported in 2 *Levins* thus,

Information for Usury was in this manner. *Mid' quod termino Sti michl'is*, and so sets forth the Usury. Defendant pleads, that *ante exhibitionem hujus Informationis scilicet termino Sti' Michaelis* (being the same Term) another exhibited against him another Information for the same Usury, and had Judgment against him, upon which the Informer Demurred, and had Judgment, for both Informations as so pleaded, refer to the first instant of the same Term; but if another Information were exhibited before this the same Term he ought to have pleaded, that this Information was exhibited such a day in the Term, and that at another day before in the same Term, the other Information was exhibited, and upon it Judgment, obtained 2 *Levins* 141.



*Averment.*

Baron and Feme bargain and sell Lands in Fee, on Condition. The Defendant in Replevin pleads the Statute of Usury, and alledgeth that they received 200*l.* for a Year, upon Use of the Plaintiff, and the Agreement was, that they should pay 200*l.* at the day, and 20*l.* for Use, and the Land aforesaid was to be conveyed upon Condition of payment at the day the grant to be void, and avers the Land is worth 12*l.* per Annum, and so double Use. The Plaintiff rejoyns upon the lending, that the Defendants were to have the profits of the Lands until the Condition was broken, *absque hoc*, that it was agreed that they should have the Profits of the Land, and also the 20*l.* Use. *Per Cur'* the Plea is good, tho' it is not in the Deed that the Mortgagor shall take the Profits until failure of payment, yet it may be averred if the Statute is pleaded. 1 Roll, Rep. 41. *Dodd and Ellington.*

Statute 12 Car. 2. c. pleaded in Bar  
to an Obligation in B.C. dat. 11  
die Maij, Ann. 1686.

A.B. De &c. al' dict' summonit' fuit ad re-  
spond' C. D. de placito 100 l.

Defendant prays Oyer of the Condition  
which is, that if the above bound A. B.  
and W. H. or either of them, &c. pay to  
the above named C. D. &c. 52 l. and  
10 s. on the 12 day of November next en-  
suing the date, &c. *Quibus Lect. & Aud'*  
*idem A. B. dicit quod ipse de Debito pred.*  
*virtute Scripti pred. pnerari non debet quia*  
*dicit qd' per Quendam actum in Parlamento*  
*Dom. Caroli 2di nuper Regis Anglie inchoat.*  
*& tent' apud Westm. in Com. Mid. 25 die*  
*Aprilis Anno Regni sui 12 edit. & provis. in-*  
*ter alia Inactitat. fuit Authoritat. ejusdem*  
*Parliament. quod nulla persona sive persone*  
*quecunq; ab & post 29 die Sept. Ann. Dom.*  
*1660 super aliquem contractum ab & post*  
*pred. 29 diem Septembr. caperet seu caperent*  
*directe vel indirecte pro accomodatione (Angl.*  
*Loan) aliquor. denariorum mercimoniorum*  
*Merchandizar. vel al. comoditat. quorum-*  
*cunq; ultra valor. sex Librarum pro disse-*  
*rend' (Anglice forbearance) centum libra-*  
*rum pro Anno & sic secundum istam ratam*

pro

pro majori vel minori summa vel pro longiori vel breviori tempore. Et quod omnes obligationes (Anglice Bonds) contract' & assuran. quecunq; post tempus pred. fact. pro solucone alicujus principal. summe pecunie accommodand' vel convent. performari super vel pro aliqua Usuria (Anglice Usury) super quas vel per quas reservat. vel capt. foret ultra ratam sex Librarum in centum libris ut preferatur penitus vacue forent prout per eundem actum (inter al' plenius liquet) Et pred. A. B. dicit quod post pred. 29 diem Sept. in actu pred. superius menconat. & ante confessionem Scripti obligat' pred' scilt. pred. 11 die Maii An. Dom. 1686, supradict' apud L. pred. inter prefat. C. D. & ipsum A. B. corrupt' & contra formam Statuti pred. agreeat' & concordat. fuit quod pred. C. D. accommodaret eid. A. quinquagint. libras eid. C. pred. 12 die Novembr' in condicone pred. spec' resolvend' quodque pred. A. pro lucro interesse differendo & dando diem soluconis 50 l. per tempus illud solveret prefat' C. D. summam duar' librarum & decem solidorum quodque pro securitate soluconis tam preter 50 l. de principali debito pred. quam pred. 2 l. & 10 s. ipse idem A. per Scriptum suum obligatorium debet Legis forma Conficiend' deveniret tent' & obligat' prefat. C. in Centum libris cum conditione eid. subscript. pro solucone quinquagint. & duarum Librarum & decem solidorum

The Usurious Contract.

The Bond to be given thereupon.



The Money  
lent.

And the  
Bond, gi-  
ven.

rum super pred. 12 die Novemb. tunc prox  
sequen' & idem A. ulterius dicit quod in  
formacone corrupte concordie pred' inter ip-  
sum A. B. & prefat' C. D. in forma pred'  
habit. & fact' pred' C. D. postea scilicet pred.  
11 die Maij An. Dom. 1686, supradict'  
apud L. pred. accomodavit eid' A 50 l. re-  
solvend. eid' C. pred. 12 die Novemb' tunc  
prox. sequen' quod ipse idem C. A. secur' solu-  
cone tam pred. 50 l. quam pred. 2 l. 10 s. pro  
Interesse lucro differendo diem soluconis inde  
per Script' Obligat' predict' hic in curia pro-  
lat' ad tunc & ibid' devenit tent' & obligat'  
prefat. A. D. in pred. 100 l. cum condicone  
pred. superius recitat' Quodq; predict' C. D.  
tunc & ibid. accepit pred. scriptum obligatori-  
um pro solucone predictar' 52 l. & 10 s. se-  
cundum formam & effect' corrupt' concordie  
predicte. Et pred. A. ulterius dicit quod pre-  
dict' summa 2 l. & 10 s. pro differend' &  
dando diem soluconis pred. 50 l. pro tempore  
pred. sic ut presertur excedit ratam sex libra-  
rum pro 100 l. pro uno Anno per quod pred.  
Scriptum Obligatorium hic in Curia pro-  
lat' vigore pred. actus Parliamenti vacuum &  
nullius vigoris in Lege existit & hoc paratum  
est verificare unde per' iudicium si ipse de de-  
bo' pred. virtute Scripti obligat' pred. onerari  
debeat, &c.

Et pred. C. D. dicit quod, &c. pre-  
cludi non debet quia dicit quod pred. 11 die  
Maij A. D. 1686, su<sup>r</sup>radiet<sup>r</sup> apud L. pred.  
ad requisitionem pred. A. B. inter ipsos C.  
D. & A. B. agreeat<sup>r</sup> fuit in forma sequen<sup>r</sup>  
videl. quod pred. C. D. accomodaret eid<sup>r</sup> A.  
B. 50 l. Legalis, &c. ac de eo haberet &  
recuperet pro Interesse & dando diem soluconis  
inde secundum ratam 5 l. pro centum libris  
pro uno anno & non amplius. Quodque qui-  
dam T. C. de L. pred. scriptor qui tunc ha-  
buit in manibus suis 50 l. de denarijs ipsius  
C. D. & agreeat<sup>r</sup> fuit inter pred. quer<sup>r</sup> & des<sup>r</sup>  
quod ipse pred. T. C. so illas dict<sup>r</sup> A. B. sol-  
veret & deliberaret ac prepararet & de pre-  
fat<sup>r</sup> A. B. & per W. H. in conditione nomi-  
nat<sup>r</sup> caperet ad usum ipsius C. D. legale Scrip-  
tum Obligator<sup>r</sup> cum condicone pro solucone pre-  
dar<sup>r</sup> 50 l. cum interesse secundum ratam 5 l.  
pro cent<sup>r</sup> libris ut prefertur Et idem C. D.  
ulterius dicit quod pred. T. C. postea die &  
An. ult spec<sup>r</sup> apud L. pred. solvit<sup>r</sup> & delibe-  
ravit pred. A. B. pred. 50 l. ac adtunc &  
ibid. in absentia & sine Notitia ipsius C. D.  
pred. Scriptum Obligatorium in pl<sup>r</sup>ito predict<sup>r</sup>  
superius spec<sup>r</sup> scripsit & de pred. A. B. &  
W. H. cepit in condicone cujus pred. sum-  
ma 52 l. & 10 l. pro quinquagint & un<sup>r</sup> li-  
bris & quinq; solidis negligent<sup>r</sup> improvide &  
ex errore predict<sup>r</sup> scriptoris contra volunta-  
tem & absq; noticia ipsius C. D. script. &  
inset<sup>r</sup> fuit absq; hoc quod inter ipsum C. D.  
&

Plaintiff re-  
plies, that  
the Bond  
was made  
by a Scri-  
vener in  
his absence,  
who mi-  
stook the  
Cendition,  
and tra-  
verses the  
corrupt A-  
greement.

Et prefat' A. B. corrupte contra formam statuti pred. agreeat' seu concordat' fuit mod' & forma prout pred. A. B. superius plitane allegavit Et hoc paratus, &c.

Demurrer to the Replication and Joinder.

It was insisted upon, that here it is expressly pleaded, that the Plaintiff accepted the said Bond, which implies a Consent to it, and tho' the Plaintiff saith in his Replication, that he had no notice at the time of taking the Bond, yet if there were notice when it was accepted, that carries the Plaintiff's Consent to the corrupt Agreement; but *tota Cur.* Judgment pro *Quer.* and held it to be like *Nevison* and *Whitlives Case.* 3 *Cro.* 501. for tho' the Plaintiff did know how it was when the Bond was accepted, yet that doth not make the Plaintiff party to the corrupt Agreement: And the Plaintiff must use the Bond of necessity to recover the Money. *Mich.* 10. *W. and M.* in *C. B.* *Bush* and *Buckingham.*





Statute 13 Eliz. revifikan' Statute 37 H.  
8. pleaded in Bar al Obligation.

— pet' audit' scripti pred. Et ei Legi-  
tur, &c. pet' etiam auditum condiconis ejus-  
dem scripti et ei Legitur in hæc verba. The  
Condition of this Obligation is such, that  
the above bounden C. D. his Heirs, Ex-  
ecutors or Assigns, do well and truly de-  
liver, or cause to be delivered unto the  
above-named A. B. or his Assigns ten  
Quarters of good clean and sufficient Seed-  
Barly at or before the tenth day of Novem-  
ber next ensuing the date of these presents  
at the now dwelling House of the said A.  
B. in L. without fraud or delay, then,  
&c. *Quibus Lectis & auditis. Li. Lo.—&c.*  
Et idem C. D. dicit quod ipse de debito  
predict. virtute Scripti predict. onerari  
non debet Quia dicit per quendam act-  
um in parlamento dicte Domine Regine  
nunc apud Westm' in Com' Midd. secundo  
die Aprilis Anno Regni sui tertio deci-  
mo tent' edit int' alia inactitatum fuit aucto-  
ritate ejusdem Parlamenti quod quidam actus  
edit. in Parlamento Dom' Henrici nuper  
Regis Anglis octavi apud Westm' pred. Anno  
Regni sui 37 pro reformatione usure ab et post  
25 diem Junij prox' sequen' post predict' se-  
cundum diem Aprilis Anno Regni dicte  
Dom' Regine nunc tertio decimo supradict'  
revifi-

revificat' foret & staret in pleno vigore robore  
 & effectu in quo quidem actu edit. in Parlia-  
 mento predict' nuper Regis Anno Regni sui 37  
 supradicto int' ceter' inactitat' fuit auctori-  
 tate ejusdem Parliamenti quod nulla persona  
 siue persone cujus cunq; status gradus qualis-  
 tatis siue Condicionis ipse vel ipsi foret seu fo-  
 rent ad aliquod tempus post ultimum diem  
 Januarij in eod' Statuto de anno 37 supra-  
 dict'. specificat' per viam seu mediu' aliquar'  
 corruptarum barganie accomodaconis excam-  
 bie cheviansie conveyancie (Angl' Shift) seu  
 interesse aliquorum mercimoniorum Merchan-  
 dizarum seu alterius rei siue aliarum rerum qua-  
 rumcunq; aut per aliquam aliam corruptam siue  
 dereptivam viam vel medi' aut per aliquam co-  
 vinam ingenium seu deceptivam viam vel con-  
 veyanciam haberent recuperent acciperent vel ca-  
 perent in Lucro vel proficuo pro differendo seu pro  
 dando diem soluconis unius anni Integri de et  
 pro ejus vel eorum moneta aut alia re que foret  
 debit' pro eisdem Mercimoniis Merchandizis  
 siue alijs re vel rebus ultra summam decem li-  
 brarum in Centum libris. Et sic secundum  
 ratam illam & non ultra de et pro majori sum-  
 ma aut pro longiori aut breviori tempore &  
 non plus siue majus lucrum vel summam inde  
 habend' sub penis & forisfacturis in eod' actu  
 menconat' & content' prout per eundem actum  
 edit. anno 37 supradict' int' alia plenius ap-  
 paret. Et ulterius inactitatum fuit autori-  
 tate ejusdem Parliamenti dicte Dom. Regine  
 nunc tent' apud Westm' pred. Anno Regni  
 sui

In tertio decimo supradicto quod omnes obli-  
 gationes contract' & assuran' collaterales seu  
 al' fiend' pro solucone alicujus principalis aut  
 monete accomodand' aut convencone perfor-  
 mand' super vel pro aliqua usura accomodand'  
 vel faciend' aliquod contra predict' actum  
 adtunc revivificat' super vel per cujus acco-  
 modaconem vel fact' reservaretur vel accipe-  
 retur ultra ratam decem librarum pro Centum  
 libris pro uno anno penitus vacuum forent prout  
 per eundem actum de anno tertio decimo su-  
 pradicto plenius Liquet. Et idem C. D. ul-  
 terius dicit quod post predict'. 25 die Junij  
 in predict'. actu de anno tertio decimo su-  
 pradicto specificat' & ante confectiorem Scripti  
 predict'. hic in curia prolat' scilicet pred. vicesi-  
 mo primo die Augusti anno regni Dom. Re-  
 gine nunc 38 supradicto quidam R. D. pa-  
 ter pred. C. D. indebitat' fuisset prefat. A.  
 B. in 30 s. legalis, &c. ac quidam T. W. adtunc  
 indebitatus fuisset eid' A. B. in 50 s. Legalis &c.  
 ac pd. A. B. ante tunc deposuisset (anglice had  
 laid forth) in quadam secta versus prefat. R. D.  
 summam 10 s. Legalis, &c. ac quod eod' 21  
 die Augusti anno 38 supradicto apud, &c.  
 in Com' &c. quoddam colloquium habit. fuit  
 int' ipsum C. D. & prefat' A. B. de disse-  
 rendo diem soluconis predict'. 40 s. per pre-  
 fat. R. D. eid' A. B. ut prefertur debit' a  
 predict'. 21 Augusti anno 38 supradict' usq;  
 decimum diem Novembris tunc prox' se-  
 quen' ac etiam pro securitate predict'or' 50 s.  
 eid' A. B. per prefat' T. W. ut prefertur  
 debit.



debit. & super colloqu' illo eod' 21 die Augusti an. 38 supradict' apud, &c. in Concord. &c. inter prefat' A. B. & pred. C. D. per viam corrupte bargainie corrupte concordat & agreeat' fuit quod idem C. D. haberet de prefat' A. B. decem solidos in pecunijs numeratis ad usum ipsius C. D. propr' non quod pred. A. B. acquietaret & exoneraret pred. R. D. de pred. 30 s. per ipsum R. prefat' A. B. in forma predict'. debuit autem de predict' 10 s. per eundem A. B. in forma predict'. ut prefertur deposit. ac etiam quod pred. A. B. acquietaret & exoneraret prefat' T. W. de predict'. 50 s. per eundem T. prefat' A. B. in forma predict'. debuit. Qui quidem summe per ipsum C. D. sic habend' & per prefat' A. B. prefat' C. D. & T. W. sicut prefertur exonerand' in toto se attingunt ad 5 l. Et ulterius ad tunc & ibid. corrupte agreeat' fuit inter prefat' A. B. C. D. & pred. T. W. quod idem C. D. pro eisdem 5 l. sic dat' & exonerat' daret & deliberaret prefat' A. B. decem quarteria boni parris Anglice cleanc & sufficien' seminal. hordei (Anglice Seed Barly) ad vel ante decimum die Novembr' tunc prox' sequen' ac quod idem C. D. pro secura deliberacone eorundem decem quarteriarum hordei ad vel ante predict' decimum diem Novembris tunc prox' sequen' per scriptu' suum obligatorium deveniret obligat' prefato A. B. in summa viginti librarum legalis monete Anglie. In performacone cuius quidem corrupt' bargainie & agreeamenti propr'

pd. C. D. postea & antea confeconem scripti pd.  
hic in Cur' rolat. scilicet pred. 21 die Augusti  
An. 38 supradict' apud, &c. habuit & re-  
cepit de prefat' A. B. ad usu' ipsius Will'i  
propr' pred. 10 s. ac pred. A. B. exonera-  
vit & acquietavit pred. R. D. de pred.  
30 s. per eundem R. prefat' A. B. ut prefer-  
tus debet ac de pred. 10 s. per eund' A. B.  
in secta predict' ut preferi deposit' ac etiam  
acquietavit & exoneravit pred. T. W. de pd.  
50 s. per eund' T. W. prefat' A. B. in forma pd.  
debit. Quodque idem C. D. eod' 21 die Augusti  
An. 38 supradict' apud Lond. in Paroch. &c.  
per Scriptum suum obligatorium hic in Curia  
prolat' devenit obligat' prefat' A. B. in summa  
20 l. cum condicione inde subscript' pro secuta  
deliberatione predictor' decem quarteriorum  
boni puri & sufficien' seminal' hordei (Anglice  
Seed Barly) ad vel ante pred. decimum diem  
Novembr' tunc prox sequen. in condicione preda  
superius specificat ei idem C. D. ulterius dicit  
qd. Quod libet quarterium seminal' hordei (An-  
glice Seed Barly) in mercatu de Melm. in  
pred. Com. L. & in quolibet alio mercatu in-  
fra eundem Com' ad omnia tempora super  
quibuslibet diebus mercatorijs a predict'. tem-  
pore conferconis Scripti predict'. usque pred.  
decimum diem Novembris in condicione  
ejusdem Scripti superius spec' valebat 20 s. Et  
sic idem C. D. dicit quod pred. A. B. pro  
deferendo exonerando & dando diem soluco-  
nis predictarum 5 l. per tempus pred. reserva-

vit sibi super Contractum predict' ultra ratam decem librarum pro centum libris pro uno anno contra formam predict' statuti de anno 37 supradict' per quod pred. Scriptum Obligator' hic in curia prolat' pro securitate deliberationis predictor' decem quarteriorum hordei sic ut premstratur ex predicta causa corrupte usure in forma pd. fact' vigore predicti actus de anno 13 supradict' penitus vacuum in Lege existit. Et hoc paratus est verificare unde petit iudicium si ipse de debito pd' virtute scripti predict' onerari debeat, &c.

Et pred. A. B. precludi non, &c. quia protestando non cognovit aliqua per pred' C. D. superius allegat' fore vera pro placito quod ante confeccionem scripti predicti hic in curia prolat' pred. R. D. indebitat' fuisset eid' A. B. in 33 s. & 11 d. & quod pred. T. W. ante confectionem Scripti pred. similiter indebitatus fuisset eid' A. B. in 50 s. quod que idem A. B. adtunc erogasset (Anglice had laid forth) pro duobus brevibus versus prefat' R. D. sex solidos que quidem seperales summe in toto se attingebant ad octoginti novem solid' & 11 d. quodque in consideratione quod idem A. B. exoneraret predictos R. D. & T. W. de pred' 89 & 11 d. ac in consideratione 10 s. & 1 d. Legalis, &c. per ipsum A. B. predict. C. D. in manibus solut' predict' 21 die Augusti sanno 38 supradict. apud C. pred. in Com. &c. pred. pro & in conf-



consideratione 5 l. consimilis monete eid' C. D. solvend' super deliberaconem pred. decem Quarteriorum hordei eid' A. B. inter ipsum A. B. & prefat' C. D. concordat' fuit. Quod pred. C. D. deliberaret eid' A. B. decem quarteria boni puri & sufficien' seminabilis hordei (Anglice Seed Barly) ad vel ante 10 diem Novembr' tunc prox' sequen'. Et quod pro segura deliberacone hordei pred. modo & forma pred. scriptum pred. hic in Curia prolat' factum fuit sive aliqua Intentione sive consideratione alicujus usure aut' corrupt' agreeament' contra formam Statuti predict' proinde habend' vel sperand' Absq; hoc quod corrupte concordat' & agreeat' fuit inter ipsum A. B. & C. D. & pred' T. W. quod pred. C. D. pro pred. 5 l. sic dat' & exonerat' daret & deliberaret eid' A. B. predict' decem quarteria boni puri & sufficien' seminal' hordei (Anglice Seed Barly) ad vel ante pred' decimum diem Novem' tunc prox' sequen' prout pred. C. D. superius allegavit. Et hoc paratus est verificare unde petit judicium &c. super quo pred' C. D. ad rejungeid' ad pred' replicationem pred' A. B. superius plvitat' solemnit' exact. nihil inde dic' per quod idem A. remanet versus prefat' C. D. inde indefens. Ideo considerat' est quod pred' A. recuperet versus prefat' C. debitum suum pred' & damna sua occasione detentionis debito illius (ad talem summam) eid' A. ex assensu suo per Curiam hic adjudicat'. Et pred' C. in mia.

## Evidence.

Upon Issue, *non est factum*, matter upon the Statute of Usury cannot be given in Evidence. *Hob. fo. 12. 5 Rep. Whelpdales Case vid. supra sub Tit. Pleadings.*

Where he who borrowed the Money may be a Witness.

It was resolved in the Case of one *Long*, that upon Information on the Statute of Usury, he who borrows the Money may be a Witness after he has paid the Money, but not before, *Raymund 191.* and so is my Lord *Coke*, 1 *Inst. b.* to be understood.

Certainty of the Bargain where to be gone in Evidence.

In Information in the Exchequer, *quod def' per viam corrupte barganie & chevisansie fact'* between the Defendant and one *E. H.* received, &c. and doth not shew the certainty what the Bargain was, but generally *per viam corrupte*, &c. *Per Cur.* so is the usual course in the Exchequer, being grounded upon the Receipt, and that is to be proved in Evidence: But it was agreed that in pleading to avoid a Bond or Assurance, it ought to be particularly pleaded and shewed, for the Party is privy to the matter of his Contract; but the Informer is not privy thereto, therefore it sufficeth him to shew the particulars upon the Evidence. *Cro. Jac. 440. Bedo and Sander-son.*

The Informer to shew the particulars upon the Evidence.

Inform

Information in the Exchequer against Sir *Woolstan Dixy* upon the Statute of Usury. *M. 29 Eliz.* the Informer gave in Evidence, an Usurious Contract upon a Bargain for Wares, the Information exhibited was for Loan of Money. *Per Cur.* the Evidence was not pursuant to the Issue, and did not maintain the Information. There are three Words in the Statute, *Bargain, Loan, and Chevisance*; and these are three several things, and therefore if the Information be conceived upon Loan, and he gives in Evidence, a corrupt Bargain for Cloth, it doth not maintain it. There was a Case in the Exchequer *in tempore 2. Eliz.* that the Defendant had taken more than 10*l.* in the 100*l.* But in the Information, no Corruption in the Bargain was alledged, and so Judgment against the Informer. *1 Loor. 95, 96.* Sir *W. Dixy's* Case.

In what Case the Evidence doth not maintain the Information.

Corruption to be alledged.

### *Issue, Tryal, Verdict.*

A Contract was made at *W. in Staffordshire*, by which it was agreed, that for an Horse and 2 Tun of Iron, the Plaintiff should have for them, and for the forbearing the Money for such a small time 50*l.* whereas in truth they were but of the value of 40*l.* and the Bond was made for the



*Of Usury, and Usurious Contracts.*

To be tried  
not where  
the Bond  
was made,  
but where  
the Usuri-  
ous Contract  
is alledged  
to be.

payment of 50*l*. Defendant pleads the Statute of 13 *Eliz.* to avoid the Bond. The Plaintiff saith it was well and duly made upon good Consideration, *absque hoc*, that it was made for such Usurious Contract: Upon this Issue it was tried in the County of *Staffordshire*, and found *pro Quer'* the Bond was supposed to be made at *London*, and it was objected that the Tryal should have been there. *Cur. Contra*, for the Bond is confessed, but the Point is if it were made for Usury, which is alledged to be at *W.* in *Com' Staff.* If a Deed were made by Duress, the issue shall be tried by a *Venire* of the place where the Duress is supposed, and not where the Deed is made. *Cro. El.* 195. 1 *Leon.* 148. *Kinnerly* and *Smart*.

Agreements  
to be tra-  
versed, be-  
cause feve-  
ral.

Upon an Information between *Paramor* and *Robinson*, in *B. R.* where several Contracts upon Usury being alledged, issue was joined whether it were *corrupte agreeat' modo & forma prout*. And by all the Justices of *England* it was resolved to be an ill Issue, for he ought to have traversed the Agreements, because they are several. Cited in *Heath* and *Dauntly's Case*. *Cro. Jac.* 544.

If a Contract be alledged to be made with 2 jointly and Usuriously, and it is found the Contract was only made with one of them, the Plaintiff shall not have Judgment upon this Verdict, for it is not the same Contract. *Daux and Aston's in Cam' Scaccarii.*

Contract allowed to be made with 2, and it is found only with one.

Debt on corrupt Bargain agreed by *Snow* and *M.* that *S.* should lend, and *M.* should be Bound to such Persons as *S.* should name on 21 *l.* lent to pay 30 *l.* at the end of six Months, if the Ship returned, or did not go forth (as indeed it did not) and that such Person was to bear the peril of Sea, and that the Defendant *Snow* for Brocage shall have a certain Sum; the Jury found this Usury. It is at the return of a Ship, *& tunc in servitio Dom' Regis*, and the Ship might be within a Mile of Harbor. *Per Twisden*, had this matter been found Specially it had not been Usury, *contra* on a general Verdict as here, which the Court agreed. The Action is brought against *Snow* the Broker, whereas by 12 Car. 2. c. the Action is to be brought against the Party who lent, which was *S.* to whom the Bond was made. The hazard goes to the Principal, and is a probable one. 2 Cro. 507. the Court agreed Bottomree good; but *contra* in this Case

Brocage.

Difference between a Special and a general Verdict.

*Of Usury, and Usurious Contracts.*

where the possibility is remote, and the Money lent by *Snow*,

Verdict im-  
perfect.

In Information in *Scaccario* upon the Statute of Usury by *C. quitam, &c. versus L.* Defendant pleads to Issue, and the Jury returned, who gave an imperfect Verdict, for they found an Acceptance and no Loan, &c. and a *Venire facias de novo* was awarded.

Jury find  
not corrupte  
agreement,  
yet good.

Special Verdict find an Agreement between them in the same manner *preut*; but doth not find it was *corrupte agreeatum*, yet its good, for there is difference between an Information, which ought to be precisely alleged, and Special Verdict wherein all the Circumstances are found, which being apparent to the Court to be Usurious, and cannot by intendment have any other Construction, it sufficeth: And one *Mervin* and *Higgins's* Case was cited to be adjudged, that if the corrupt Agreement be not expressed in the Verdict, and the Matter is apparent to the Court to be Usury, there the Jury need not to shew it was corruptly, for *res ipsa Loquitur*, otherwise it is if it be but implied. *Cro. Jac. 507. Roberts and Tremaine.*

Difference  
between an  
Information  
and a Spe-  
cial Verdict.



Information in the Exchequer on Statute for Usury: The Jury find upon not Guilty pleaded, *quod quoddam corruptum agreementum in informatione pred. specificat*, the Defendant was guilty, and that he took the Profits of such Land Let to him for performance of that corrupt Agreement to the value of 60 l. but it is not found he lent the, &c. *prout* the Information. *Per Cur.* this Verdict is void, and it shall be taken by Intendment that it was lent, otherwise he might not take the Profits, and a *Venire Facias de novo* was awarded. *Cro. Jac* 210. *Cook and Laneday.*

Verdict  
void.

The Parties were at Issue on Information on Statute of Usury, and the matter depended 4 Terms after Issue joined. Defendant prays for his own Expedition that he might have *Nisi prius* with *proviso* as the Course is in the Exchequer, in such Case to send Commissions into the Country where the Information is laid for the Tryal of the Issue joined in the said Court, and that at the Suit of the Defendant: This was in *B. C.* and the Court doubted if they might grant such such *Nisi prius*, because the Queen was *quodammodo* Party to the Suit; but no such *Nisi prius* shall be granted where the Queen her self is meerly Party. 2 *Leon.* 110. *Knevit and Taylor.*

Tryal by  
Proviso.

Debt on Bond, Defendant pleads the Statute of Usury, *quod corrupte agreeat' fuit & quod corrupte recepit* the Usury, and Issue was taken upon both, and it was found *pro Def' Per Cur.* its no mistrial but good, because the Issue was taken upon a thing material, and the other not material, and both being found for the Defendant its good enough. *Moor 790. Johnson and Clerk.*

### Judgment.

No Judgment, because justly not corruptive.

If for several Sums Judgment shall be for that, that is good and void for the other.

Debt upon the Statute of 37 H. 8. of Usury, the Writ was, that he *corruptive* Lent 40*l.* &c. against the Form of the Statute, and that he, such a day lent 20*l.* &c. against the Statute, but doth not say *corruptive* as to that. Defendant pleads *non debet*, and it was found against him, and it was moved, that the Plaintiff should not have Judgment for any of those Sums, for it is clearly ill for the 20*l.* for want of the word *corruptive*; but *per tot' Cur'* it being good for part he shall have Judgment for that part, for being several Sums, it is in nature of 2 several Actions, and adjudged for the Plaintiff for the 40*l.* And in this Case if the Defendant had Demurred upon the Declaration it had been good for the one, and the Plaintiff should have had

had Judgment for that part. *Cro. Jac.* 104.  
*Woodies Case.*

Information for Usury against 2, and  
the one found guilty, and the other is not.  
No Judgment, *Lanc.* 195. 59, 60.

Mich. 15 Caroli Secundi Regis.

Mid. ff. **M**emozand qđ Egidius Bour.  
ne de Paroch Sci Dunstani  
in Deciden' Gen' qui tā p Dnō Rege  
nunc qm' p seipso in hac pte sequitur ve  
nit cora' Baron' hujus Sec'ij vicesimo  
septimo die Novembris hoc Termino in  
ppr' pson' sua Et tā p eodem Dnō Rege  
nunc qm' pro seipso dat Cur' hic intelligi &  
informari quod queda' cōcētiō h' fuit in  
ter quosdam Jacobum Fisher de Paroch  
Sci Clementis Dacorum in Com' Midd  
pdict Gen' & J. H. de eadem Paroch in  
Com' pdict Gen' de & concernen' accomo  
datione Anglice the loan centum libe'  
eidm' Johi p pfať Jacobum fiend Ac sup  
cōcētiōnem illa' postea scil't decimo octavo  
die Decemb' an reg' dict Dm' Regis nunc  
decimo quarto apud Paroch Sci Clementis  
Dacor' pdict in Com' pđ corrupte concordā  
tū & agreeatū fuit inter pdict J. Fisher & pfať  
J. H. quod pdict J. F. accomodaret pfať  
J. H. nonagint & duas libe' & quatuor so  
lidū pecuniis numatis tantū ut pcell' cen  
tū

An Infor  
mation  
brought in  
the Exche  
quer upon  
the Statute  
of Usury de  
Anno 12  
Car. 2.



tū libē eidem I. p p̄fat Jacobū accomodandū  
ac venderet & delibaret p̄fat J. H. ac ip̄e  
idem J. H. acciperet de eodem Jacobo sex  
virgas & dimidū unius virge panni lancei ad  
majore rat & p̄ciū qui eedem sex virge &  
midū unius virge panni vere valuissent vi-  
deret ad & scdm rat & p̄ciū vigint & quatuor  
solid p virgā in toto se attingen scdm rat  
& p̄ciū ill ad 7 l. & 17 s. p & in noīe & loco  
accommodacionis Anglice the loan resid p̄e-  
d̄atum cent libē ubi tū eodem sex virge &  
dimidū unius virge vere valuissent 4 l. 11 s.  
tantū viz. ad & scdm ratā & p̄ciū 14 s. p  
virgā & non amplius Qd̄q̄ p̄otus I. F. dif-  
ferret & daret diem solucōis sepal' denat  
sumat p̄d p̄fat I. H. usq̄ decimum octatu  
diem Martij tunc p̄r sequen' qd̄q̄ p̄ diffe-  
rendo & dando diem solucōis inde usq̄ p̄d  
decimu' octabu' diem Martij tunc p̄r se-  
quen' p̄d I. H. solberet eidem I. F. sup eund  
decimu' octabu' diem Martij centu' libē  
neon tantum pecunie amplius quant le-  
gale infesse centu' libē p̄ tempus p̄d attin-  
geret Anglice should amount unto ac qd̄ p̄  
securitat solucōis centum librarum p̄d  
unacu' legali infesse p̄d p̄fat I. F. sup p̄d  
decimu' octabu' diem Martij fiend p̄d I. H.  
& quidam F. Wainwright & R. Morley deve-  
nient obligat p̄fat I. F. p̄ quoddā script  
obligat de penal' sumā ducentarum libra-  
rum leglis monet Anglie sub cōdicōe' p̄  
solucōe' centu' librarum cum legli infesse  
p̄fat

p̄fat I. F. sup p̄b decimur octabu' diem  
 Marcii tunc p̄r sequen' Et ultius p̄b E.  
 Bourn qui ta' &c. ultius dat Cur' hic in-  
 telligi & informari q̄d in p̄secuōnem An-  
 glice pursuance & p̄formaōnem corrupti  
 agreament & contractus p̄b p̄b I. F. postea  
 scilicet p̄b decimo octavo die Decemb' āno  
 decimo quarto sup̄dict apud Paroch' Sci'  
 Clementis Dacorum p̄dict accomodabit  
 & delib'bit p̄fat I. H. p̄b sum̄am nonagintē  
 & duarum libr' & quatuor solidorum in pe-  
 cunijs num̄atis ut p̄cell' p̄dicarum centum  
 libr' acetia' adtunc & ibm' vendidit & deli-  
 bavit p̄fat I. H. p̄dict sex virgas & dimid'  
 unius virge panni lanei ad p̄dict maior' ratē  
 & p̄ciu' qm' eedem sex virge & dimid' unius  
 virge panni p̄dict valuer' viz. ad & scdm'  
 p̄dict ratam & p̄cium viginti & quatuor so-  
 lid' p' virga' attingen' scdm ratē & p̄ciu' ill'  
 ad p̄dict septem libr' & sexdecim solid' p' &  
 in noie' & loco accomodaōnis Anglice the  
 loan resid' p̄b centū libr' ubi revera erēt  
 sex virge & dimid' unius virge panni ad-  
 tunc & ibm' tant' valuissent p̄b quatuor  
 libr' & undecim solid' Ac p̄dict I. H. easom'  
 pecunias num̄atas ac pannu' p̄dict ad rata'  
 & p̄ciu' p̄dict sic ultra veru' balorem inde  
 erissen' p' & in noie' & loco accomodaō' p̄b  
 centū libr' adtunc & ibm' recepit & accepta-  
 bit Ac adtunc ibm' in altior' p̄formaōn'  
 corrupti agreamenti p̄dict p' securitate so-  
 lutōnis centum libr' cum legali interesse p'  
 eisom'

eisdem' p̄fat I. F. sup̄ p̄dict' decimu' octabu' diem Martij tunc p̄r sequen' p̄dict I. H. F. W. & R. N. p̄ scriptu' suu' obligat' sigillis suis sigillat' geren' dat' eodem' decimo octavo die Decembr' anno decimo quarto sup̄dco debenerunt obligat' p̄fat I. F. in p̄dict' summa ducentarum lib̄ sub condicoe' eidem' scripto obligat' subscript' p̄ vera solucioe' p̄fat I. F. Executoribz vel Administratoribz suis centu' lib̄ cu' interesse legali in & sup̄ p̄dict' decimu' octabu' diem Martij tunc p̄r sequen' Et p̄dict' E. B. qui ta' &c. ultius dic' & ostendit Cur' hic qđ p̄dict' I. postea scil't p̄dict' decimo octavo die Martij Año Regni dei' Dni' Regis nunc decimo quarto apud Paroch' Sci' Clementis Dacorum p̄dict' scdm' forma' & effectū cōdicois p̄dict' ac in ultiozem p̄formaōem corrupti agreementi p̄dict' solvit p̄fat I. F. p̄dict' centum lib̄ necnon trigint' solid' p̄ legali interesse inde p̄ tempus p̄dict' que quidam' centu' lib̄ & trigint' solid' p̄dict' I. F. de eodem' I. H. adtunc & ibm' recepit & acceptabit Et sic idem' E. B. qui ta' &c. dic' qđ p̄dict' I. F. p̄ viam ac media p̄dict' corrupte barganie & agreementi p̄ differendo & dando diem soluconis p̄dict' summe nonagint' & duarum lib̄ & quatuor solid' sic p̄ p̄fat I. F. p̄ I. H. in pecuniis num̄atis accommodat' ac p̄ quatuor lib̄atum & undecim solidorum p̄ verobalozē & p̄cio panni p̄dict' p̄ p̄fat I. F. eisdem' I. H. sic ultra veru' valorē inde in

forma



forma p̄dict̄ vendit & libat a p̄dict̄ decimo octavo die Decemb' anno decimo quarto sup̄dict̄ usq; p̄dict̄ decimu' octavu' diem Marcij tunc p̄ sequen' corrupte usuriose & contra forma' Statuti in humoi' casu edit̄ & p̄vis cepit recepit & acceptabit summa' quatuor lib̄ & quindecim solidorum viz. tres lib̄ & quinque solidi p̄ panno p̄dict̄ ultra vñ valorem inde vendit ac trigint̄ solidi p̄ interesse p̄dict̄ Que quidm' quatuor lib̄ & quindecim solidi sic p̄ p̄fat̄ I. F. cap̄ recepit p̄ acceptat̄ p̄ accommodat̄ & donat̄ diei solut̄ois p̄dict̄ nonagint̄ & duarum lib̄ & quatuor solidorum sic p̄ p̄fatu' I. F. p̄fatu' I. H. in forma p̄dict̄ accommodat̄ & p̄dict̄ quatuor lib̄ & undecim solidorum p̄ vñ p̄cio sive valore panni p̄dict̄ p̄ p̄fat̄ I. F. p̄fat̄ I. H. in forma p̄dict̄ vendit & delibat̄ excedunt summam sex librarum p̄ centum libris p̄ uno anno contra formam Statuti p̄dict̄ unde p̄dict̄ E. B. qui ta' &c. ta' p̄ dco Dñō Rege qm' p̄ seipō pet̄ advisament̄ Cur' hic in p̄missis Et qđ p̄dict̄ I. F. p̄ offens̄ sua p̄dict̄ forisfaciat ducent̄ & nonagint̄ lib̄ & quinque solidi viz. triplicem valore' p̄dict̄ monet ac veri p̄cij sive valor̄ p̄d̄ sex virgarum & dimid̄ un' virge panni lanei sic p̄ p̄fat̄ I. F. contra forma' Statuti p̄d̄ accommodat̄ barganizat̄ & vendit qđq; ipe' dem E. B. qui tam &c. medietat̄ forisfc̄ur̄ inde here valeat iuxta forma' Statuti p̄d̄ necnon qđ p̄d̄ I. F. ven' hic ad respondend̄ de p̄miss̄ &c.

Addenda.

## Addenda.

*Here I shall add some Cases of payment of Interest-Money adjudged in a Court of Equity, upon account of payment of Interest upon Interest.*

The Lord Keeper *Bridgman*, and *Grimston*, Master of the Rolls, declared it as a Rule and Course of the Court, on reference to a Master to state an account upon a Mortgage, that all Money paid as Surety, shall be reckoned as Principal Money from the time of payment, and Interest upon Interest to be allowed accordingly. In *Morly* and *Ellis's Case*, *Trin.* 20. *Car.* 2.

In *Tothill* 230. in 13 *Fac.* 1. *Holman* and *Vaux's Case*, the Mortgagee ordered to account for Profits received, and for the Use of those Profits.

*Mich.* 26. *Car.* 2. The Lord Keeper declared it should be a Rule. A Mortgagee (of a Mortgage forfeit) shall have Interest for his Interest, and should only be accountable for what Profits he should receive and not for what he might have received unless there be fraud.

In what Cases a Man shall lose his Interest.

A Mortgagor refusing to receive his Money on Tender, after forfeiture shall lose his Interest from the Tender. *Mannings's Cases* 29.

What Interest is allowed in *Chancery*.

The Chancery seldom allows to the Plaintiff above four or five Pound *per Cent.* Interest for Money, because he is to reduce the Duty and the increase; but to the Defendant they usually allowed the full six *per Cent.* because he usually lost something besides the Principal. 2 *Keb.* 187. *Some and Parker.*

Here I shall recite Old and late Statutes concerning Usury, for the ease of such as have not the Volumes ready at hand, and by which also you may see what care our Ancestors took in cases of Usury, and how in time it came by degrees to be settled and regulated.



*Merton, c. 5. An. 20 H. 3.*

From henceforth the Usury shall not run against any within Age from the time of the Death of his Ancestor (whose Heir he is) unto his Lawful Age. So nevertheless, that the payment of the Principal Debt with the Usury that was before the death of his Ancestor (whose Heir he is) shall not remain unpaid by reason of this.

*The Statute de Judasmo.*

None from henceforth shall lend any thing to Usury upon Lands, Rent, or other thing: And that no Usury continue from *St. Edward* the last past forward, but the Covenants afore made shall stand, but the Usury shall cease. And that all those which owe debts to *Jews* upon Gages moveable, redeem them between this and *Easter* at the farthest, or else that they be forfeited. And if any *Jew* led for Usury against this Establishment, the King by himself, nor by none of his shall meddle to help him to his Debt, but will punish him at his Pleasure for the Trespass: And to the Christian will do no right to recover him his Gage.

That

3 H. 7. c. 6.

That all unlawful Chevisances and Usury be damned, and none to be used upon pain and forfeiture of the value of the Mooney or Goods so Chevised or Lent, the said Forfeiture to run upon the Seller or Lender thereof. And also for as much as divers English and Estrangers Brokers which have been named and assigned to occupie Lawful Brocage, been Inducers and Bargain-makers of unlawful Chevisance and Usury, and in some part of unlawful Exchanges to the hurt of our Sovereign Lord and this his said Realm: Therefore it is Enacted, &c. That all such Brokers dealing unlawfully in any of the Premisses be put apart and never to Occupy as Brokers within this Realm, as they may be espied and found in Cities, Boroughs and Towns, by Majors, Bailiffs, or any of them, or of their Ministers, where such Bargains be used. And that every Broker that is found defective in making of unlawful Brocage, shall forfeit for every default 20*l.* and have Imprisonment for half a Year, and farthermore to be punished by the Pillory or otherwise to their open Rebuke and Shame: The King to have one half of the said Forfeits, and the Party that will sue the other half, &c. This Act is repealed by Statute

37 H. 8. c. 9.

I 2

Stat.

*Stat. 11 H. 7. c. 8.*

All manner of Person or Persons, lending Money to or for a time taking for the same Loan any thing more besides or above the Money lent by way of Contract or Covenant at the time of the same Loan, saving lawful Penalties for non payment of the same Money lent, and that all manner of Person and Persons which hereafter sell any Goods, Cattels or Merchandize to any Person or Persons being in Necessity, and the Seller himself or by his Broker or Factor in that behalf again buy the same Goods, Chattels or Merchandizes of the same Person to whom they were sold, being in Necessity of his Broker or Factor in that behalf within three Months after they been sold or a less Sum of Money than they were sold for, knowing the same Goods so bought again afore by the same Buyer or Buyers to be sold after the form aforesaid, and that every Person and Persons lending or taking any Money to any Person or Persons to a certain time, and taketh Lands, Tenements, or any Hereditaments or other Bonds for Surety, Profit, and sure payment of his or their Money lent at the time assigned without Condition or Adventure, and also at the time of the same Loan or taking of the said Money



ney covenanteth, appointeth or Contracteth, that he or they that so lend or take the Money, shall have the Revenues and Profits of the Lands, &c. of him that so borroweth or taketh, by a certain time, that then every Person hereafter, upon any of the Premises convicted forfeit the Money, or the value in Money of the said Money, Goods, Chattels, Merchandises as is above-said so Sold or Lent after such value, or they be Sold or Lent for in any Form afore-said, whereof the King shall have one Moie-ty and the Party that will sue shall have the other: And if no Man will sue, then the King to have the whole. To be sued by Information in any of the King's Courts, and such Process as in Actions of Debt at Common Law, provided that in the Courts of Chancery and Exchequer they shall make such Process as hath been used aforetime in Informations afore them commenced, wherein the Defendant shall not wage his Law, &c. reserving always to the Spiritual Jurisdiction, their lawful punishment in case of Usury. This Act is repealed by Stat. 37 H. 8. c. 9.

*Stat. 37 H. 8. c. 9.*

Shifts.

Repeal.

void.

Sell.

3 Months.

Buy.

Where divers Acts have been made for the avoiding and punishment of Usury, being a thing unlawful, and of other corrupt Bargains, Shifts, and Chevilances, which be so obscure in terms, and so many Questions grown upon the same, and of so litle effect, that little punishment, but rather encouragement to offenders hath ensued thereby: For reformation thereof, be it, &c. that all and every Acts, Statutes, and Laws heretofore made, of, for, or concerning Usury, Shifts, corrupt Bargains, Chevilances, and every of them, and all Pains Forfeitures and Penalties concerning the same, and every part thereof, shall from henceforth be utterly void and of none effect to all intents, constructions and purposes. And be it, &c. that no Person or Persons of what Estate, Degree or Condition soever he, or they be, from, &c. shall by himself, Factor, Attorney, Servant or Deputy sell his Merchandises or Wares to any Person or Persons, and within three months next after by himself, Factor, Attorney, Deputy, or by any other Person or Persons to his use and behoof, buy the same Merchandises or Wares, or any part or parcel thereof, upon a lesser price, knowing them to be the same Wares or Merchandises that he before did so bargain and sell, upon the pains and forfeitures hereafter limited in this Estatute. And be it, &c. that no Person or Persons of what

what Estate, &c. by way or mean of any <sup>Loans</sup> corrupt Bargain, Loan, Exchange, Chevi-  
fance, Shift or Interest of any Wares,  
Merchandizes, or other thing or things  
whatsoever, or by any other corrupt or de-  
ceitful way or mean, or by any Covin, En-  
gine, or deceitful way or conveyance, shall  
have, receive, accept, or take in lucre or <sup>Gains</sup> gains,  
for the forbearing or giving day of  
payment of one whole Year, of, and for  
his or their Money or other thing, that  
shall be due for the same Wares, Merchan-  
dizes, or other thing or things above the  
sum of ten Pound in the hundred, and so <sup>r. 15. the 100</sup>  
after that rate and not above, of, and for  
a more or less Sum, or for a longer or shor-  
ter time, and no more greater gain or Sum  
thereupon to be had, upon the pains and  
forfeitures hereafter in this Act mentioned  
and contained. And be it enacted, &c.  
that if any Person or Persons, at any time <sup>sell</sup> after, &c. do bargain and sell, or lay to  <sup>Mortgage</sup> Mortgage by any way or mean any Man-  
nors, Lands, Tenements, or Heredita-  
ments to any Person or Persons, upon con-  
dition of payment or non payment of any  
Sum or Sums of Money to be had, payed,  
or made, at any day certain, or before any  
such day by him that shall so bargain, sell,  
or lay to Mortgage the same Manors, Lands,  
Tenements, or Hereditaments, that the  
same Person or Persons, to whom any such



s.l. the 100

Eorf.  
3. value.imprison.  
Morty.

Mannors, Lands, Tenements, or Hereditaments shall be so bargained, sold, or layed to Mortgage, shall not by reason thereof, have nor take in Lucre or Gains of the Issues, Revenues, and Profits of the same Mannors, Lands, Tenements, or Hereditaments above the sum of ten Pound in the hundred for one whole Year, and so after the rate abovesaid for a more or lesser Sum, or for a longer or shorter time and no more, nor otherwise, upon the pains, forfeitures, and Penalties hereafter in this present Statute limited and expressed. And be it enacted, &c. that if any Person or Persons, of what Estate, &c. shall do any Act or Acts, thing or things, contrary to the Tenor, Form, and effect of this Statute, or of any Clause, Article or Sentence contained in the same, that then all and every Offender and Offenders therein. or in any part thereof, shall forfeit and lose for every such offence the treble value of the Wares, Marchandizes, and other thing or things so bargained, sold, exchanged or shifted, and the treble value of the Issues and profits of the said Manors, Lands, Tenements, and Hereditaments so had, taken or received by reason of any such Bargain, Sale, or Mortgage, and also shall have and suffer imprisonment of his body, and make fine and ransome at the King's Will and Pleasure. The moiety of which forfeiture of the said treble

treble value, shall be to the King, and the other moiety to him or them that will sue for the same in any the Kings Courts of Record, by Action of Debt, Bill, Plaint, or Information, &c. in which, &c. no Wager, &c. Provided alway, and be it, &c. that this Act nor any thing therein contained, shall not in any wise extend to any lawful Obligation indorsed with a condition, nor to any Statute or Recognizance made and to be made for the payment of a lesser Sum, so that the same Obligation, Statute, or Recognizance be made for a true, just, and perfect debt, or for the performance of any other true Covenants made or to be made, upon a just and true intent had between the Parties, other than in cases of Usury, Interest, corrupt Bargains, Shift, or Chevisance, nor yet shall extend to any Recovery, Fine, Feoffment, Release, Confirmation, or Grant made or to be made upon condition with a true intent, other than to such Recoveries, Fines, Feoffments, Releases Confirmations, and Grants as shall be made upon Condition extending to Usury, Interest, corrupt Bargains, Shifts, or Chevisance, any thing in this Statute contained, or any Law, Statute, or Ordinance heretofore had, used, or made to the contrary notwithstanding. *Anno 37 Hen. 8. cap. 9.*  
*This Act was repealed by 5 Edw. 6. cap. 20.*  
*here*

*Of Usury, and Usurious Contracts.*  
*here following 7. But it is revived again for*  
*a time by 13 Eliz. cap. 8. here following,*

Stat. 13 Eliz. c. 8.

Wherein the seven and 30 Year of the Reign of the late King Henry the eight amongst other Acts and Statutes then made, it was enacted by authority of Parliament, that no Person or Persons at any time after the last day of January, in the said seven and thirtieth Year, should have, receive, accept, or take in lucre, or gains, for the Loan, forbearing, or giving day of payment of any Sum of Money, for one whole Year, above the Sum of ten pound in the hundred, and so after that rate, and not above, of, and for a more, or less Sum, or for longer or shorter time, upon the pains and forfeitures in the said Act mentioned and contained. The which Act was not meant nor intended for the maintenance and allowance of Usury, as divers Persons, blinded with inordinate love of themselves, have and yet do mistake the same, but rather was made and intended against all sorts and kinds of Usury, as a thing unlawful, as by the Title and Preamble of the said Act it doth plainly appear. And yet nevertheless the same was by the said Act permitted, for the avoiding of a more evil, and inconvenience, that before that time was used and exercised. But forasmuch as

Usury



Usury is by the word of God utterly prohibited, as a vice most odious and detestable, as in divers places of the holy Scriptures it is evident to be seen, which thing by no godly teachings and perswasions can sink into the hearts of divers greedy, uncharitable, and covetous Persons of this Realm, nor yet by any terrible threatnings of God's wrath and vengeance that justly hangerth over this Realm, for the great and open Usury therein daily used and practised they will forsake such filthy Gain and Lucre, unless some temporal punishment be provided and ordained in that behalf. For reformation whereof be it enacted by the authority of this present Parliament, that from the first day of May, which shall be in the year of our Lord God, one thousand, five hundred, fifty and two, the said Act and Statute, concerning only Usury, Lucre, or Gain, of, or for the Loan, forbearing, or giving days of any Sum or Sums of Money, be utterly abrogated, void, and repealed. And furthermore be it enacted by the authority aforesaid, that from and after the said first day of May next coming, no Person or Persons, of what Estate, Degree, Quality, or Condition soever he or they be, by any corrupt, colourable, or deceitful conveyance, slight or Engine, or by any way or mean, shall lend, give, set out, deliver, or forbear any Sum or Sums of

Repealed.

Lend.

of

Lucre.

Forf.

Moity.

of Money, to any Person or Persons, or to any Corporation, or body Politick, to or for any manner of Usury, increase Lucre, Gain, or interest to be had, received, or hoped for, over and above the Sum or Sums so lent, given, set out, delivered, or forborn, upon pain of forfeiture of the value, as well of the Sum or Sums so lent, given, set out, delivered, or forborn, as also of the Usury, Increase, Lucre, Gain, or Interest thereof, and also upon pain of Imprisonment of the Body or Bodies of every such Offender or Offenders, and also to make Fine and Ransome at the King's Will and Pleasure. The Moity of which forfeiture of the said value, shall be to the King, and the other moity to the party that will sue for the same in any of the King's Courts of Record, by Action of Debt, Bill, Plaint, or Information, wherein no wager of Law, Essoin, or Protection shall be allowed or admitted. *An. 5 & 6 E. 6. c. 20. This Act was repealed for a time by 15 Eliz. cap. 8. as here followeth.*

Wherein 37 H. 8. a good Act was made for the reformation of Usury, whereby especially the corrupt Chevisance and bargaining by way of sale of Wares, and shifts of Interest was well expressed, which was repealed by another Act made 5 & 6 E. 6. against Usury, which latter Act hath not done the good that was hoped for, as well for that there

was

was no provision against such shifts of Interest and sale of Wares, as also for that there is no difference of forfeiture, upon greater or lesser Exactions, by reason of loans upon Usury: Be it Enacted, that the Statute made in the 5th and 6th Year of the Reign of King *Edward* the 6th, and every Branch and Article of the same, from and after the 25 day of June next coming, shall be utterly abrogated, repealed, and made void: And that the said Act made in the said 37 Year of King *Henry* the VIII. from and after the said 25 day of June next coming, shall be revived, and stand in full force, strength and effect. And be it further Enacted, that all Bonds, Contracts, and Assurances collateral, or other, to be made for payment of any Principal, or Money to be lent, or covenant to be performed, upon or for any Usury in lending or doing of any thing against the said Act now revived, upon or by which Loan or doing, there shall be reserved or taken above the rate of ten Pounds for the hundred for one Year shall be utterly void. x.li.the 100 Brokers. And be it further Enacted, that all Brokers, Solicitors, and divers of Bargains for Contracts, or other doing against the said Statute now revived, whereupon shall be reserved or taken more than after the rate of ten Pound, for the loan of an hundred Pound for a Year, shall be to all intents and purposes judged, punished, and used



Præmunire.

xl. or under.

Forfeit.

Just. of Oyer

Just. of Ass.

Just. o. P.

Majors.

Sheriffs

Bailiffs.

used as Counsellors, Attorneys, or Advocates in any case of *Præmunire*. And forasmuch as all Usury being forbidden by the Law of God, is sin and detestable: Be it Enacted, that all Usury, Loan and forbearing of Money by way of Loan, Chevisance, Shifts, sale of Wares, Contract, or other doings whatsoever for Gain, mentioned in the said Statute, which is now revived, whereupon is not reserved, or taken, or covenanted to be reserved, payed or given to the Lender, Contracter, Shifter, Forbearer, or Deliverer, above the Sum of ten Pound for the loan or forbearing of one hundred Pound for one Year, or after that rate for a more or lesser Sum or time, shall be from the five and twentieth day of June next coming, punished in form following, that is to say: That every such offender against this branch of this present Statute, shall forfeit so much as shall be reserved by way of Usury, above the Principal for any Money so to be lent or forborne. All such forfeitures to be recovered and employed, as is limited for forfeiture by the said former Statute now revived. And be it further Enacted, that Justices of Oyer and Terminer, and Justices of Assise in their Circuits, Justices of Peace in their Sessions, Majors, Sheriffs, and Bailiffs of Cities, shall also have full Power and Authority to enquire, hear, and determine of all and singular Offences committed against the

the said Statute now revived. And it be further Enacted, that the said Statute now revived, shall be most largely and strongly construed for the repressing of Usury, and against all Persons that shall offend against the true meaning of the said Statute by any way or device, directly or indirectly. Provided alway, that this Statute doth not extend, nor shall be expounded to extend unto any allowances or payment for the finding of Orphans, according to the ancient Rates or Customs of the City of London, or any other City where like order is for the custody of Orphans, and their Goods, as in the said City of *London*.  
Provided always, and be it further Enacted by the Authority aforesaid, that if any Person or Persons, shall from and after the said five and twentieth day of June, offend contrary to the said Statute revived by this present Act, made in the seven and thirtieth Year of the Reign of the said late King *Henry* the Eighth: That then all and every such Offender or Offenders shall and may also be punished and corrected, according to the Ecclesiastical Laws heretofore made against Usury. And that all and every Person and Persons, offending in Usury, Shifts, or Chevisance against this present Act, and not taking or receiving, but only after the rate of ten Pound in the Hundred, or under, for a Year, shall be only punished by the pains and forfeitures provided  
and

*Of Usury, and Usurious Contracts.*

and appointed by this Act, against such as shall not take or receive over and above the rate of ten Pound in the hundred for a Year, and not otherwise. This Act to continue and endure for and during the space of five Years next after the end of this present Parliament, and from thence unto the end of the first Session of the Parliament then next ensuing. And be it further Enacted by Authority aforesaid, that if this present Act shall not be continued in the first Session of the Parliament next ensuing the said term of five Years, and then in the same Session no other Statute or Provision made against Usury, or corrupt Chevizance: That then all and every the Laws and Statutes repealed by this Act, shall remain and be of such like Force and Effect, as if this present Act had never been had nor made. *An. 13 Eliz. cap. 8. And An. 27 Eliz. cap. 11. This Act is continued until the end of the next Parliament. And An. 28 Eliz. cap. 5. It is continued until the end of the next Parliament. And An. 31 Eliz. cap. 10. It is continued to the end of the next Parliament. And An. 35 Eliz. cap. 7. It is continued to the end of the Parliament next ensuing. And in An. 39 Eliz. cap. 18. This Act of 13 Eliz. cap. 21. and every branch, clause and proviso contained in it was made to remain, and to continue in force and effect for ever.*



21 Jac. c. 17.

None shall upon any Contract, directly or indirectly take for the Loan of any Money or other Commodities above the rate of 8 *l. per Cent. per Annum* for 100 *l.* for one whole Year, under pain to forfeit treble the value of the Money or other things Lent.

No Scrivener, Broker, or Solicitor shall take or receive, directly or indirectly for Brokage above the rate of 5 *s.* for the Loan of 100 *l.* for one whole Year, nor above 12 *d.* for making a Bond, on pain to forfeit 20 *l.* to be divided between the King and the Prosecutor, and also to suffer one Months Imprisonment.

12 Car. 2. c. 13.

None shall take, directly nor indirectly for the Loan of Money or other Commodities, above the value of 6 *l. per Cent.* for the Forbearance of 100 *l.* for a Year, and so after that rate, and so all Contracts, Bonds, &c. whereupon more shall be reserved shall be void; they that reserve more, shall forfeit the treble value of Money or other thing Lent.

K

Scrive.

Scriveners, Brokers, Solicitors, that shall take for Brocage, directly or indirectly above the rate of five shillings for the forbearing, the Loan of 100 *l.* for a Year, or 12 *d.* for making a Bond or Bill concerning the same, shall forfeit 20 *l.* and have Imprisonment for half a Year, the one half to the King, the other to the Prosecutor. Confirmed by 13 *Car. 2. c. 14.*

*Note*, Chevisance, (a word frequently used in the Statutes) comes from the French word *Chevier*, to come to the end or head of a Business, and because the perfecting the Bargain is the drawing the matter to the Head, this word, Chevisance, is used for Bargaining: In the Statute it is most commonly used for unlawful Bargains or Contracts. Want of the value of an House as to an Usurious Contract, was said to be the sole Offence or Chevisance, which is pretended in *Bedo* and *Sanderson's Case. Cro. Jac. 441.*

*vide Stat 12 Anna. c. 16. whereby if Interest of money is reduced to 5 per cent per Annum.*

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# INDEX.

## A

### Action.

**A** *Assumpsit* lies for Interest-money, not  
debt. 3

*Agreements, Vide Contracts.*

*What Agreement makes the Contract Usurious,  
which otherwise would not be so. 5, 6*

*No Agreement to have the Principal Money.*  
11, 12

*Collateral Agreement or Security may make  
Usury. 27*

*A corrupt Agreement to take Use for the time  
past. 41*

*Where verbal Agreement may be pleaded and  
when. 71*



# INDEX.

## Annuity.

- Annuity and not Usury.* 10, 67  
*A Mortgage for the securing an Annuity* 12  
*Where Agrèement for an Annuity shall be taken  
as Usury.* 33  
*Condition of a Bond of 300 l. for the payment  
of 20 l. per Annum during the lives of the  
Plaintif's Wife and Son.* 12

## Audita Querela.

- Original in Aud' Quer' upon a Statute Sta-  
ple for Goods avoided by Usury. The Pre-  
sident.* 28  
*Where Aud. Quer. lies not and why.* 68  
*Audita Querela to avoid a Statute for Usu-  
ry, Utlawry pleaded.* 81

## Averment.

- Where Averment may be taken that the Con-  
tract was Usurious.* 40, 45  
*Its not said per viam accomodationis, but it  
was averred quod corrupte accomodavit,  
and good.* 51  
*Allegation may be in some cases, tho' against  
the words of the Condition* 74  
*Averment that the Mortgagor was to take the  
Profits till failure of payment of the Money,  
may be, tho' not in the Deed.* 87  
Bot-

# INDEX.

## B

### Usurious Bargains or Contracts.

- B** *Ottomre, what and why the same is no Usury.* 7, 8, 9
- Of Brokers and Brokage.* 20, 22, 103
- Diversity between a Bargain and a Loan.* 9, 11, 12
- Usurious Contracts, vid. Agreement, vid. Usury, the last Contract may be void on the Statute, not the first.* 19
- Casualty. If the casualty go to the Interest only, and not to the Principal it is Usury: Aliter if Principal and Interest both in hazard.* 13
- Where it shall be a casual Bargain, and yet Usurious, or where corrupt Agreement is Usurious tho contingent.* 6, 14, 36.
- Where payment depends on many things, one of which in probability may happen, where it is Usury or not.* 7, 8, 9
- A mere casual Bargain no Usury.* 8
- What shall be said an Usurious Contract in respect of the Contingency of a Life.*
- If the Contract be to pay or not to pay at Election, its not Usury.* 13
- What shall be said an Usurious Contract in respect of the times of payment, vid. infra Tit. Usury. A plain Bargain and Purchase Conditional of a Rent.* 15
- What's an Usurious Contract in respect of the mistake or miswording of a Scrivener.* 17

# INDEX.

- Mistake of a Scrivener hurts not where there is  
no corrupt Agreement.* ibid.
- Of subsequent Receipt and continuance of  
Agreement after the first Contract.* 19
- Of a new Bond given in satisfaction of the first  
Sum.* 19
- In what cases there ought to be an Usurious  
Contract, and a taking to make good the  
Information.* 51

## Covenant.

- Act of Covenant lies for Interest.* 3

## D

- N**O *Action of Debt lies for the payment of  
Interest money.* 3
- Debt on the Statute of Usury, and Narr'  
president.* 58, 59
- Judgment in Debt on the Statute of Usury.* 65
- Tam quam notwithstanding the Statute* 27
- Eliz.* 66

## Devastavit.

- Payment of Usurious Bond by Execuor is a  
Devastavit.* 4
- Diversities. Eight Diversities to be considered  
in judging a Contract to B. Usurious or not.* 4
- Demurrer.**



# INDEX.

## Demurrer.

- What is confessed by Demurrer.* 6  
*A second Defeasance for more than the Statute allows.* 30

## E

## Election.

- To pay or not to pay at Election, not Usurious.* 13

## Evidence.

- Evidence in Information of Usury where not pursuant to the Issue.* 49  
*Where and in what case he that borrowed the Money may be a Witness.* 100  
*Certainty of the Bargain where to be given in Evidence.* *ibid.*  
*Where the Informer must shew the particulars in the Evidence.* *ibid.*  
*In what cases the Evidence will not maintain the Information.* 101

## F

## Forfeiture, *vid.* Receipt.

*Where the Assurance shall not be void, but the Party shall forfeit the treble value.*

- What forfeiture if there be a corrupt Agreement at the time of lending the Money.* 42

# INDEX.

What forfeiture if the Agreement be good,  
and after he receives more than he ought.

42

Usurious Contract after the Bond shall not  
avoid the Bond, but is punishable by the  
treble value.

43, 44

If the Bond be good when it is made, an Usu-  
rious Contract, after, doth not make the  
Bond void, but by such Usurious Contract  
and Receipt there is forfeiture of treble va-  
lue

83

## I

### Indictment.

The form of Indictment on the Statute 12 Car.

2.

46

### Information.

Variance from the Statute.

41

Information grounded on the Receipt, not on  
the Contract.

41

Information to be precisely alledged.

47

Diversity between Information and Special  
Verdict.

47

Where Information need not shew the certain-  
ty, but per viam corrupte, &c. is suffi-  
cient.

48

*Interest. - vide C. D.*

*Interest made payable Half-yearly,  
is not usury. 16. - as to interest*

*Inform.*

*paid instantly. 17. 18 mistakes of Serivins  
in regard to payment of interest 18. 19.*

# INDEX.

<i>Information in what Court lies</i>	48
<i>Attorney General enters non vult prosequi, its no Bar to the Informer for his Moity.</i>	
<i>Information did not shew whose Money it was, its ill.</i>	49 ibid.
<i>Corrupt taking to be alledged in the Information.</i>	50
<i>The place where the corrupt Bargain was made ought to be shewed.</i>	ibid.
<i>Information must set forth the quantity of the Interest received.</i>	52
<i>Information uncertain.</i>	ibid.
<i>Information for Usurious Contract by 2, its not sufficient to find a Contract by one</i>	ibid.
<i>Evidence in Information, vid. Evidence.</i>	
<i>Information brought in the Exchequer on Statute 12 Car. 2.</i>	107
<i>Information on the Statute of Usury within what time to be brought.</i>	53
<i>Information where to be laid.</i>	54
<i>Form of Information on the Statute of Usury.</i>	55
<i>Interesse damni &amp; Interesse Lucri as a No- mine pance.</i>	39, 74



# INDEX.

## Issue.

*Where several Contracts are alledged, the agreements are to be traversed because severally, & corrupte agreeat' modo & forma prout will not do.* 69, 101

## Judgment.

*What Judgment at Common Law against an Usurer.* 73

*If Information is of several Sums, Judgment shall be for that that is good and void for the other.* ibid.

*Statute of Usury cannot be pleaded to a Judgment to avoid it.* 82

## L

**L** Oan, vid. *Agreements, Contract.*

## M

**M** Ortgage to secure an Annuity not Usurious. 15

*Where there may be power of Redemption and not a corrupt Agreement.* 16

*Its not Usury if one take any thing by the bye for a Pawn.* ibid

# INDEX.

By the Conveyance the Mortgagee is intitled to  
the Interest and the Profits. 18, 34  
Of Usurious Mortgages. 32

## P

### Probability.

**W**Here a Contract shall be said Usuri-  
ous by reason of probability.

Bargain may be casual and yet Usurious in  
respect of probability and apparent possibi-  
lity. 14

### Pleadings.

Where the Statute of Usury is not to be plea-  
ded. 36

Where the Bargainee may plead a verbal A-  
greement to avoid Usury. 38

By particular Conclusion the Plea may be ill,  
which on contra formam Statuti generally  
might be good. 46

Difference between pleading to avoid a Bond  
and an Information. 48

Bar to an Obligation by the Statute of Usury  
Repl' quod' obligat' facta fuit pro justo  
debito. and traverse the corrupt Agreement,  
Rejoinder and Issue on the Traverse. 65

To what Security the Statute may be pleaded. 66

Where

# INDEX.

*Where a Bar may be made good by the Repli-  
cation.* 70

*Where a verbal Agreement may be pleaded  
and when.* 71

*If any corrupt Agreement be it must be pleaded* 72

*Bar ill because he doth not say corrupte  
agreeat' fuit.* 73

*Traverse of the Agreement only, and not to  
make the day parcel of the Issue.* 74

*One shall not take Advantage of his own mis-  
pleading.* 75

*The Special Matter to be pleaded on the Sta-  
tute, and not non est factum.* 75

*A Stranger cannot plead Usury in avoidance  
of a Conveyance.* 76

*Pardon pleaded.* 81

*General pardon not allowed in arrest of Judg-  
ment, it not being pleaded before.* 81

*Secund' ratam of 10 l. per Cent. and saith  
not what it is.* 82

*Defendant pleads ante exhibitionem bille  
another debtor exhibited information a-  
gainst him.* 84

*Statute 12 Car. 2. pleaded in Bar to an Obli-  
gation in B. C. Plaintiff replies the mi-  
stake of the Scrivener, and Demurrer.* Po

*Statute 13 Eliz. Revivificat Stat. 37 H. 8.  
pleaded in Bar to a Bond.* 93



# INDEX.

## Profit.

*Usury as to taking the Profits of the Lands.*  
37

## R

## Receipt.

*Usury upon a Receipt on Stat. 37 H. 8 and  
13 Eliz. explained.* 41

*Where there ought to be a taking or Receipt to  
make it Usurious.* ibid.

*Corrupt Agreement must be on the lending to  
make the treble forfeiture when the Action  
is grounded on the Loan; but being on the  
corrupt Receipt, the corrupt Receipt is suf-  
ficient, but not unless the Money be con-  
tinued or refusal to deliver up the Bond  
without.* 44

*Information grounded on the Receipt.* 48  
*It must be laid to be received by corrupt ways  
and Means.* 51

## Redemption.

*Power of Redemption inserted only to evade  
the Statute.* 33

## Rent.

# INDEX.

## Rent.

*A plain Bargain and Conditional Purchase of  
a Rent.* 15

## S

**S**tatute 37 H. 8. 39  
 Statute 13 Eliz. c. 8. Explained. 40  
 Statute 12 Car. 2. c. 13. Explained 42  
 Of Misrecital of the Statute 12 Car. 2. 45  
 Misrecital of the Statute, 13 Eliz. *ibid.*  
 (Giving day for forbearance) in the Statute  
 how to be extended to the time to come or  
 to the time past. 50  
 Statute mispleaded. 84

## T

**T**Ryal, where to be tryed, where the  
 Bond was made, or where the Usu-  
 rious Contract is alledged to be. 102  
 Trial by Proviso. 105

## U

## Usury.

*The Nature of Usury.* 1, 2, 3  
*What shall be said an Usurious Contract.* *ibid.*

*What*

# INDEX.

What shall be said an Usurious Contract by reason of casualty uncertainty or hazard.	5
What shall be said an Usurious Contract in respect of times of payment.	14
In what cases it shall as a penalty or nomine poenæ and no Usury.	23
Diversity between Interesse damni & Interesse Lucri.	ibid.
Usury as to other things, as Goods, Chattels, &c. and not barely upon Loan of Money.	24
How the value of things agreed for must be alledged.	25
Of Goods being over valued.	27
Where it is not Usury by reason of a mistake.	36
Usury as to taking the profits of Lands.	37
If the Bond be good when made as for the payment of a just debt, an Usurious Contract after makes it not void, but by subsequent Contract and Receipt, the treble is forfeit.	83

## Verdict.

Imperfect.	104
Difference between a general and special Verdict.	103

## Contract



# INDEX.

*Contract Usurious made with 2, and the Jury find it only made with one.* 103

*Jury find not a corrupt Agreement yet good.* 104

*Information for Usury against 2, and the one is found guilty, and the other not, no Judgment.* 107

## W

*Usurious Wagers.* 1, 6



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**F I N I S.**

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Will: s

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